

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gerald L. Rich et al.,
Appellant,

v.

Dawson County Board of Equalization,
Appellee.

Case Nos: 18C 0469 & 18C 0470

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on January 9, 2019. Sharon L. Rich (joint owner of the property; Sharon and Gerald Rich are hereafter referred to collectively as “the Taxpayers”) appeared telephonically. Jared R. Dean, Deputy Dawson County Attorney, appeared telephonically on behalf of the Dawson County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and heard argument regarding its jurisdiction to hear these appeals. The Commission granted the County Board an extension to provide additional evidence in the form of witness affidavits, but the County Board subsequently determined that its witnesses had no recollection of the relevant events and did not submit any additional evidence.

II. STANDARD OF REVIEW

The Commission obtains jurisdiction over an appeal when the appeal form is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.¹ Any action of the County Board pursuant to §77-1502

¹ Neb. Rev. Stat. §77-5013 (Reissue 2018).

may be appealed to the Commission in accordance with Neb. Rev. Stat. §77-5013 on or before August 24.²

III. ANALYSIS

An appeal or petition to the Commission is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission, or received by the Commission, on or before the date specified by law for filing the appeal or petition.³ On September 10, 2018, the Commission received an envelope containing two completed appeal forms, the requisite filing fees, and two decisions of the County Board made pursuant to Neb. Rev. Stat. §77-1502. The envelope was postmarked September 7, 2018, and the appeal forms themselves were dated September 6, 2018, by Gerald L. Rich. As noted above, the deadline for filing an appeal of this type of decision from Dawson County was August 24, 2018.

The Taxpayers acknowledge that they filed the appeals after the deadline. At the hearing, Ms. Rich testified that when she picked up the blank appeal paperwork from the County Clerk's office, a person working in the office told her it was due back on September 30. Because the Taxpayers relied upon the person's statement in filing the appeal, and because the appeal was received before September 30, the Taxpayers assert that the Commission should have jurisdiction over the appeal.

The legal term for the Taxpayers' argument is *equitable estoppel*, but the argument fails for several reasons, including: the Taxpayers have not satisfied the elements for equitable estoppel,⁴ the doctrine of equitable estoppel will not be invoked against a governmental entity except under compelling circumstances,⁵ which have not been demonstrated here; and the jurisdictional issue in this case has been raised by the Commission itself, not the County Board.⁶ Most significantly, the well-established rule in Nebraska is that parties cannot confer subject matter jurisdiction on a

² Neb. Rev. Stat. §77-1510 (Reissue 2018). Dawson County is not eligible to extend the protest filing deadline under Neb. Rev. Stat. §77-1502(1).

³ Neb. Rev. Stat. §77-5013(2) (Reissue 2018).

⁴ See, e.g., *State ex rel. Nebraska Health Care Ass'n v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 795-769, 787 N.W.2d 100, 108 (1998).

⁵ *Id.* We note that the August 24 deadline is discussed in the instructions on both appeal forms submitted by the Taxpayer, and the forms repeatedly advise users to read the instructions before filing an appeal. See Case Files.

⁶ See Case Files. As a result, even if the County Board were estopped from asserting lack of jurisdiction as a bar to the Commission's consideration of the appeal, the Taxpayers would have no grounds to prevent the Commission from considering the jurisdictional question *sua sponte*, as is the case here.

tribunal by acquiescence or consent, nor may it be created by waiver, estoppel, consent, or conduct of the parties.⁷ Jurisdiction cannot be created by estoppel against the County Board or by the conduct of the County Board's employees, even if the Taxpayers relied upon that conduct to their detriment.

For all of the foregoing reasons, the Commission determines that it does not have jurisdiction over the appeals.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeals.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeals are dismissed with prejudice.
2. As required by Neb. Rev. Stat. §77-5018 (Reissue 2018), this decision, if no appeal is filed, shall be certified within thirty days to the Dawson County Treasurer, and the officer charged with preparing the tax list for Dawson County as follows:

John Moore
700 N Washington Rm C
Lexington, NE 68850

Vickie Clements
700 N Washington Rm B
Lexington, NE 68850

3. Each party is to bear its own costs in this matter.

⁷ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

SIGNED AND SEALED: March 27, 2019

Seal

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner