

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gordon E. Krogh,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 18C 0478

**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. Gordon E. Krogh (the Taxpayer) appeared telephonically at the hearing before the Commission. Kim Watson, Deputy Dakota County Attorney, appeared telephonically on behalf of the Dakota 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 this appeal.

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 Appeals of county board actions to address omitted real property or clerical errors may be appealed to the Commission within thirty days after the board's final decision.² Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

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

² Neb. Rev. Stat. §77-1507(1) through (3) (Reissue 2018).

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

III. ANALYSIS

An appeal is timely filed, or a filing fee is timely received, 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.⁴ On October 25, 2018, the Commission received an envelope containing an appeal of a determination made by the County Board on September 24, 2018; the envelope was postmarked October 23, 2018, so its contents were timely received. However, this envelope did not contain the required \$25 filing fee, and the Commission does not have jurisdiction over an appeal unless the filing fee is timely received. On October 29, 2018, the Commission received an envelope postmarked October 25, 2018, containing the required filing fee.

The Nebraska Supreme Court has long held that Nebraska Revised Statutes §25-2221 and its predecessors apply not only to matters in litigation but also to statutes.⁵ Section 25-2221 provides, in relevant part, that “the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act ... after which the designated period of time begins to run. The last day of the period so computed shall be included...” Therefore, the thirty-day period begins to run on September 25, and the final day for filing was October 24. Under this calculation, an envelope postmarked October 25 was not placed in the mail on or before the deadline. As a result, the filing fee was not timely received, and the Commission does not have jurisdiction over the appeal. The appeal must be dismissed.

CONCLUSION

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

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.

⁴ Neb. Rev. Stat. §77-5013(2) (Reissue 2018).

⁵ State ex. Rel. Wieland v. Beerman, 246 Neb. 808, 523 N.W.2d 518 (1994).

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 Dakota County Treasurer, and the officer charged with preparing the tax list for Dakota County as follows:

Jeff Curry
Dakota County Assessor
PO Box 9
Dakota City, NE 68731

Robert Giese
Dakota County Treasurer
PO Box 863
Dakota City, NE 68731

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

SIGNED AND SEALED: March 27, 2019

Seal

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner