

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rudy Stanko,
Appellant,

v.

Sheridan County Board of Equalization,
Appellee.

Case No: 18R 0026

**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 September 27, 2018. Appellant Rudy Stanko appeared telephonically at the hearing before the Commission. Jamian Simmons, Sheridan County Attorney, appeared telephonically on behalf of the Sheridan 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. By stipulation of the parties, the record remained open to receive additional documents from Appellant, and closed upon receipt of those documents.

II. STANDARD OF REVIEW

In order to have standing to invoke a tribunal's jurisdiction, one must have some legal or equitable, right, title, or interest in the subject of the controversy.¹ The defect of standing is a defect of subject matter jurisdiction.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 *Douglas County Board of Commissioners v. Civil Service Commission*, 263 Neb. 455, 641 N.W.2d 55 (2002).

² *In re Invol. Dissolution of Wiles Bros.*, 285 Neb. 920, 830 N.W.2d 474 (2012).

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

III. ANALYSIS

On August 13, 2018, the Commission received a completed appeal form related to real property located in Sheridan County. All available evidence indicates that the property was owned, as of that date, by Elizabeth Stanko. The appeal form was signed by Rudy Stanko, as “legal counsel for Elizabeth Stanko.”⁴ No evidence indicates that Mr. Stanko was licensed to practice law in Nebraska as of the appeal date.⁵ Mr. Stanko testified at the hearing that Elizabeth Stanko is his mother, aged ninety-six, and that he routinely assists her with various tax and legal issues. However, Mr. Stanko testified that no power of attorney document authorizing him to file the appeal had been executed at the time of filing the appeal. Mr. Stanko submitted a power of attorney document within the time the record remained open for receipt of that document, but the document was executed on October 1, 2018, which was both after the date of filing and after the appeal filing deadline of August 24, 2018.⁶ It remains undisputed that no power of attorney was in effect at the time the appeal was filed.

Standing, a legal concept, is fundamental to the right to appeal. If the person bringing an appeal does not have standing, the appeal must be dismissed.⁷ In order to adhere to this requirement, the Commission has adopted rules specifying who may sign an appeal.⁸ An appeal form or petition must be signed by a party, legal counsel for a party, or a person authorized by law or the Commission’s rules.⁹ Mr. Stanko is the son of the property owner, but at the time the appeal was filed, he did not have a legal power of attorney to act on the behalf of Elizabeth Stanko by filing appeals with the Commission. Therefore, the Commission determines that at the time of filing the appeal Mr. Stanko did not have standing to file the appeal, which constitutes a defect in subject matter jurisdiction. The appeal was not properly perfected, and the Commission does not have jurisdiction to hear the appeal.

⁴ Case File.

⁵ In proceedings before the Commission, “Legal Counsel” means a lawyer in good standing licensed to practice law in the State of Nebraska, or a non-resident lawyer who has fully complied with the requirements to appear before the Commission. 442 Nebraska Administrative Code Ch. 2.001.29 (06/11).

⁶ See, Neb. Rev. Stat. §77-1510.

⁷ 442 Nebraska Administrative Code Ch. 2.001.36 (06/11).

⁸ The Commission has the authority to specify the requirements for the execution of an appeal or petition in the Commission Rules and Regulations. Neb. Rev. Stat. §77-5013(4) (2016 Cum. Supp.).

⁹ 442 Nebraska Administrative Code Ch. 5.001.04 (06/11), Ch. 4.001.04 (06/11).

IV. 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.
2. As required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the Sheridan County Treasurer, and the officer charged with preparing the tax list for Sheridan County as follows:

Peg Sones
Sheridan County Treasurer
Courthouse
PO Box 570
Rushville, NE 69360

Tina Skinner
Sheridan County Assessor
Courthouse
PO Box 391
Rushville, NE 69360

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

SIGNED AND SEALED: October 24, 2018

Seal

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner