

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

David D. Boettcher
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 18R 0084

**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 November 27, 2018. David D. Boettcher (the Taxpayer) appeared telephonically. Erick Martin, 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 Any action of the County Board pursuant to §77-1502 may be appealed to the Commission in accordance with Neb. Rev. Stat. §77-5013 on or before August 24, or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. §77-1502.² Parties cannot confer subject

¹ Neb. Rev. Stat. §77-5013 (2016 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

matter jurisdiction on a tribunal by acquiescence or consent, nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

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.⁴

On September 4, 2018, the Commission received an envelope containing an appeal of a determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502. The appeal form was signed and dated August 27, 2018, and delivered in an envelope postmarked August 30, 2018. The County Board did not adopt a resolution extending the deadline for hearing protests,⁵ so the filing deadline for tax year 2018 was August 24, 2018.⁶

It is clear from the evidence before the Commission that the appeal was not received by the August 24 deadline. However, Nebraska law also provides that a person otherwise having a right to an appeal may petition the Commission on or before December 31 of each year to determine the actual value or special value of real property if a failure to give notice prevented timely filing of an appeal.⁷ In this case, the determination appealed indicates that it was mailed to the Taxpayer on August 30, 2018.⁸ In a county that has not extended the protest deadline, written notice of the county board's determination must be mailed to the protester on or before August 2. In other words, the County Board was required to mail the Taxpayer notice of its decision by August 2. If it did not, and if that prevented the Taxpayer from filing his appeal on time, the appropriate filing deadline would be December 31 instead of August 24.

David Boettcher testified that he received the County Board's determination "sometime in August," and that it was "several weeks" after the protest hearing on July 23, 2018. He was unable to testify with any greater specificity as to the date he received the notice. He

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

⁴ Neb. Rev. Stat. §77-5013(2) (2016 Cum. Supp.).

⁵ See Case File.

⁶ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁷ Neb. Rev. Stat. §77-1507.01 (Reissue 2009).

⁸ Counsel for the County Board opined that this was likely a typographical error, but did not present any witness testimony or documentary evidence to this effect.

acknowledged being aware that he had only a short time to file the protest, and stated that his wife mailed the appeal on August 29 or August 30. He also testified that the appeal was mailed after he received the County Board's determination.

The County Board's determination states on its face that it was mailed on August 30, 2018, after the appeal deadline. But the appeal form was signed on August 27 and postmarked August 30. David Boettcher testified that he submitted the appeal form to the Commission after receiving notice of the County Board's determination. We find that the mailing date listed on the County Board's determination is likely a typographical error.

The record contains insufficient evidence for us to pinpoint the dates upon which the County Board's determination was actually mailed or received by the Taxpayer. For this reason, we are unable to conclude that a failure to give notice prevented timely filing of an appeal. The Taxpayer's appeal was neither signed, nor mailed, nor received by the statutory deadline. The appeal was not timely and must be dismissed.

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

Jeff Curry
PO Box 9
Dakota City, NE 68731

Robert Giese
PO Box 863
Dakota City, NE 68731

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

SIGNED AND SEALED December 3, 2018

Seal

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner