

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kenny G. Gubbels,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 19R 0337

**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 October 15, 2019. Kenny G. Gubbels (the Taxpayer) appeared telephonically. Kim Watson, 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 file; 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 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 Neb. Rev. Stat. §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 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. §77-1510 (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

The purpose of the hearing conducted on October 15, 2019, was to resolve the issue of whether the appeal, filing fee, and required documentation were timely filed. 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

The County Board did not adopt a resolution extending the deadline for hearing protests for tax year 2019, so the filing deadline for tax year 2019 was Monday, August 26, 2019.⁵ On September 3, 2019, the Commission received an envelope postmarked August 29, 2019. The envelope contained another envelope, postmarked August 23, 2019; this envelope was marked “return to sender for postage, postage due 5.75” and “postage due 5.75.” Along with these envelopes, the Commission received an appeal form, the required filing fee, and a determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502.

In his testimony at the hearing, the Taxpayer explained that the original envelope had contained enough postage for its weight, but due to a decision to add tracking service to the envelope, the cost of mailing increased. He testified that the envelope had been returned to his office, after which he enclosed it in the new envelope and mailed it without the tracking service. The Taxpayer asserted that the amount described on the envelope as “postage due” was for tracking and should not be considered “postage.”

We disagree with the Taxpayer’s more narrow definition of “postage.” Black’s Law Dictionary defines “postage” simply as “charges for postal service.”⁶ The markings on the envelope refer to “postage due.” The tracking of an envelope is a kind of postal service, and the cost of the tracking service is a part of the postage, which must be paid in order to have the envelope delivered. The plain language of Neb. Rev. Stat. §77-5013 requires that the appeal materials be placed in the mail, *postage prepaid*, prior to the filing deadline. The Nebraska Supreme Court has noted that “§ 77-5013(2) focuses only on whether the appeal was properly placed in the mail *with sufficient postage* and a legible postmark for delivery to TERC before the

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

⁵ Only counties with over 100,000 residents in the most recent federal census can extend the filing deadline; Dakota County had a population of 21,006 as of the 2010 census. If a filing deadline is on a weekend or state or federally recognized holiday, the next business day becomes the filing deadline. Neb. Rev. Stat. §49-1203 (Reissue 2010).

⁶ Black’s Law Dictionary 1166 (6th ed. 1990).

filing deadline.”⁷ The Commission’s administrative rules contain the same requirement: “An Appeal/Petition is deemed to have been filed when [the materials] are mailed to the Commission at its office in Lincoln, Nebraska, by United States Mail, *postage prepaid*.”⁸ In this case, the appeal materials were first mailed on August 23, 2019, without sufficient postage. The materials were not mailed with adequate postage until August 29, 2019, which was after the deadline for filing timely appeals. The appeal was not timely filed.

IV. CONCLUSION

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

ORDER

1. The above captioned appeal is 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 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: October 16, 2019

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁷ *Lozier Corp. v. Douglas Cty. Bd. of Equal.*, 285 Neb. 705 at 709, 829 N.W.2d 652 at 656 (2013) (emphasis added).

⁸ 442 Nebraska Administrative Code (NAC), Ch. 5 §001.07 (6/11) (emphasis added).