

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

American Hospitality Inc.,  
Appellant,

Case Nos. 20C 0043 & 20C 0044

v.

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

Scotts Bluff County Board of Equalization,  
Appellee.

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Tax Equalization and Review Commission (the TERC) held a jurisdictional show cause hearing on September 30, 2020. Appellant (American Hospitality Inc.) appeared telephonically. David Eubanks, Scotts Bluff County Attorney, appeared telephonically on behalf of the Scotts Bluff County Board of Equalization (the County Board). The TERC took notice of its case files, received evidence, and heard argument regarding its jurisdiction to hear these appeals.

**II. APPLICABLE LAW**

TERC obtains jurisdiction over an appeal when it has the authority to hear the appeal, 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.<sup>1</sup> When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.<sup>2</sup> 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.<sup>3</sup>

**III. FINDINGS OF FACT**

On August 14, 2020, American Hospitality filed two appeals with the TERC along with the required filing fees. Each appeal included a copy of a Form 425, which is the form prescribed by the Tax Commissioner for filing reports of destroyed real property with a county board of

---

<sup>1</sup> Neb. Rev. Stat. § 77-5013 (Reissue 2018).

<sup>2</sup> *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

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

equalization pursuant to Neb. Rev. Stat. §§ 77-1307 through 77-1309. On these forms, American Hospitality asserted that the COVID-19 pandemic had destroyed its property (two hotels) by reducing the property's profitability. The forms were submitted to the County Board for consideration on or about July 6, 2020.

The County Board did not fill in the blanks reserved for the assessed value of the subject property on either Form 425. Instead, the forms made reference to an attached letter. The letter, dated July 27, 2020, stated that the "form" was "denied," because the "claim ... does not meet minimum requirements set by Nebraska State Statute." The letter further advised American Hospitality that it could file an appeal with the TERC if it disagreed with the County Board's determination.

#### IV. ANALYSIS

In 2019, the legislature adopted Neb. Rev. Stat. §§ 77-1307 through 77-1309, which set forth a procedure for modifying the assessment of real property destroyed by a natural disaster after the normal assessment date. Those statutes create a process under which a property owner files a report on a form (i.e., the Form 425 used in this case) with the county assessor and the county clerk.<sup>4</sup> The county board then adjusts the assessed value of the property to its value on the date it suffered the property damage.<sup>5</sup> If the property owner is not satisfied with the county board's new assessment, the property owner may file a protest with the county board.<sup>6</sup> The county board's decision on that protest may then be appealed to the TERC.<sup>7</sup> The statutes do not provide an alternative procedure to follow if the county board rejects the report instead of adjusting the assessed value of the subject property. American Hospitality followed the statutes up to the point at which the County Board denied its report, effectively setting the assessed value of the Subject Property at the same level as before the filing of the report, but it did not protest that denial to the County Board.

We find that the County Board was in error when it advised American Hospitality that it could appeal the County Board's denial of the report directly to the TERC. However, it is well established under Nebraska law that jurisdiction cannot be created by waiver, estoppel, consent,

---

<sup>4</sup> Neb. Rev. Stat. § 77-1308(1) (Supp. 2019).

<sup>5</sup> Neb. Rev. Stat. § 77-1309(1) (Supp. 2019).

<sup>6</sup> Neb. Rev. Stat. § 77-1309(3) (Supp. 2019).

<sup>7</sup> Id.

or conduct of the parties.<sup>8</sup> For that reason, the County Board's statement in its letter dated July 27, 2020, that American Hospitality could appeal to TERC cannot give us jurisdiction over these appeals.

The TERC is an agency which has only the powers conferred upon it by the Legislature.<sup>9</sup> A property owner's right to appeal to the TERC does not arise until after the County Board makes a decision on a protest of the assessed value determined by the County Board, but American Hospitality did not file a protest. Instead, it appealed the County Board's decision to reject its reports of destroyed real property directly to the TERC. The TERC does not have jurisdiction to hear the appeals because it does not have the statutory authority to hear the appeals.

## V. CONCLUSION

The TERC does not have jurisdiction to hear the captioned appeals.

### **THEREFORE IT IS ORDERED:**

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

Heather Hauschild  
Scotts Bluff County Treasurer  
1825 10th St.  
Gering, NE 69341

Amy Ramos  
Scotts Bluff County Assessor  
1825 10th St.  
Gering, NE 69341

---

<sup>8</sup> *Creighton*, supra.

<sup>9</sup> *Creighton* at 921, 102.

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

**SIGNED AND SEALED:** October 6, 2020

---

Robert W. Hotz, Commissioner

---

Steven A. Keetle, Commissioner