

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

Acorn LLC,  
Cypress LLC,  
Faulk Enterprises Inc.,  
Nova LLC,  
Personal Storage Center LLC,  
Stellar LLC,  
Appellants,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos.	20C 0545
	20C 0546
	20C 0547
	20C 0548
	20C 0549
	20C 0550

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on October 20, 2020 at 9:00 a.m. Nicholas F. Sullivan appeared on behalf of Appellants. Jimmie Pinkham III, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). The Commission took notice of its case files, received evidence, and heard argument regarding its jurisdiction to hear these appeals.

**II. APPLICABLE LAW**

The Commission obtains jurisdiction over an appeal when the Commission 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> 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.<sup>2</sup> An appellate tribunal, such as the Commission, cannot acquire jurisdiction over an issue if the body from which the appeal is taken

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

<sup>2</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

had no jurisdiction of the subject matter.<sup>3</sup> If the body from which an appeal was taken lacked jurisdiction, then the appellate tribunal acquires no jurisdiction. When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.<sup>4</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>5</sup>

### III. FINDINGS OF FACT

The County Board extended the protest filing deadline for tax year 2020,<sup>6</sup> so the deadline for filing an appeal of a protest decision was September 10, 2020. Attorney Nicholas F. Sullivan represented Appellants at all material times. He was quarantined due to possible exposure to COVID-19 from September 3, 2020, through September 13, 2020, and did not file these appeals with the Commission by September 10, 2020. Sullivan filed the captioned appeals on behalf of the Appellants on September 22, 2020. He also filed a Motion for Leave to File Appeal Out of Time, explaining the circumstances and requesting that the Commission grant leave to file the appeals late.

### IV. ANALYSIS

Because Appellant's motion asks the Commission to accept appeals filed after the applicable filing deadline, we address the motion under the same jurisdictional standards we apply to all appeals. 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.<sup>7</sup> Although we are sympathetic to Sullivan's situation and circumstances, the Commission has only the powers conferred upon it by the Legislature, and it does not have the power to apply equitable principles in jurisdictional matters.<sup>8</sup> Neither Neb. Rev. Stat. § 77-5013 nor Neb. Rev. Stat. § 77-5019, as urged by Appellants, contains any exceptions to the timeliness requirement. The County Board did not object to Appellants' motion, but as stated above, parties cannot confer subject

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<sup>3</sup> See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>4</sup> *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

<sup>5</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>6</sup> Case file.

<sup>7</sup> Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

<sup>8</sup> *Creighton* at 921, 102 (2000).

matter jurisdiction on a tribunal by acquiescence or consent. The appeals were not filed by the applicable deadline; therefore, the Commission does not have jurisdiction over the appeals.

**V. CONCLUSION**

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

**THEREFORE IT IS ORDERED:**

1. The 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 Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

John Ewing  
Douglas County Treasurer  
1819 Farnam St., Rm H03  
Omaha, NE 68183

Diane Battiato  
Douglas County Assessor  
1819 Farnam Street, Ste H09 Civic Center  
Omaha, NE 68183-1000

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

**SIGNED AND SEALED:** October 30, 2020

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner