

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Signworks Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 20C 0551

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 21, 2020 at 11:00 a.m. Signworks Inc. (Appellant) appeared telephonically. Jennifer D. Chrystal-Clark, 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 this appeal.

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.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 When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.³ 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.⁴

¹ Neb. Rev. Stat. § 77-5013 (Reissue 2018).

² Neb. Rev. Stat. § 77-1510 (Reissue 2018).

³ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

III. FINDINGS OF FACT

The County Board extended the protest filing deadline for tax year 2020.⁵

Appellant received a notice of valuation change from the Douglas County Assessor sometime prior to June 1, 2020, and filed a protest with the County Board between June 1 and June 30, 2020. Appellant received the County Board's decision on its protest. On September 28, 2020, the Commission received a completed appeal form with the required \$85 filing fee and a copy of the County Board's decision on the protest, made pursuant to Neb. Rev. Stat. § 77-1502. These materials were received in an envelope without a legible postmark.

At the jurisdictional show cause hearing, Appellant acknowledged that the appeal was filed after the statutory deadline. Appellant's bookkeeper, Robyn Messerschmidt, testified that she was confused about what statutory deadline applied to the appeal. Messerschmidt believed that the applicable statute was Neb. Rev. Stat. § 77-1504 and that the applicable deadline was October 15, 2020. Messerschmidt did not receive notice of a valuation change from the County Board after June 1, 2020.

IV. ANALYSIS

Neb. Rev. Stat. § 77-1502 sets forth a process for taxpayers who disagree with the assessed value of real property determined by their county assessor to file protests with their county boards of equalization. Neb. Rev. Stat. § 77-1504 sets forth a process for county boards to correct the assessment of property that is identified by the county assessor as overvalued or undervalued after March 19.⁶ Although both statutes relate to the work of county boards of equalization determining the assessed value of real property in Nebraska, they create different legal processes, initiated by different parties, with different deadlines for filing appeals with the Commission.⁷ The deadline to file appeals with the Commission is August 24 or September 10 for appeals filed pursuant to § 77-1502,⁸ and October 15 or October 30 for appeals filed pursuant to § 77-1504.⁹

This appeal arises from a decision made by the County Board on a protest filed by Appellant following receipt of a notice of valuation change from the Douglas County Assessor. That is the

⁵ Case file.

⁶ See also Neb. Rev. Stat. § 77-1315.01 (Reissue 2018).

⁷ See Neb. Rev. Stat §§ 77-1502, 77-1504 (Reissue 2018).

⁸ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

⁹ Neb. Rev. Stat. § 77-1504 (Reissue 2018).

process created by Neb. Rev. Stat. § 77-1502. Messerschmidt did not receive a notice of valuation change from the County Board after June 1, 2020, which would have been necessary to initiate a protest process under Neb. Rev. Stat. § 77-1504. All of the evidence in the record indicates that this appeal arises under Neb. Rev. Stat. § 77-1502.

The County Board extended the protest hearing deadline, so the deadline for filing the appeal was September 10, 2020. 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.¹⁰ Appellant's appeal was neither received by the Commission nor placed in the United States mail on or before the date specified by law for filing the appeal. We recognize that filing an appeal is a new experience for some taxpayers, but the filing requirements are set by the Legislature and the Commission does not have the power to waive them.¹¹ The Commission does not have jurisdiction to hear the appeal.

V. CONCLUSION

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

THEREFORE IT IS ORDERED:

1. The 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 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

¹⁰ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

¹¹ *Creighton* at 921, 102 (2000).

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

SIGNED AND SEALED: October 30, 2020

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner