

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chris F. Van Egmond,
Appellant,

Case No. 20R 0362

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Antelope County Board of Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 21, 2020 at 9:00 a.m. Chris F. Van Egmond (the Taxpayer) appeared telephonically. Joseph Abler, Antelope County Attorney, appeared telephonically on behalf of the Antelope 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

Neb. Rev. Stat. § 77-5013(3) provides, in part:

(a) For each appeal or petition regarding the taxable value of a parcel of real property, the filing fee shall be:

(i) Forty dollars if the taxable value of the parcel is less than two hundred fifty thousand dollars;

(ii) Fifty dollars if the taxable value of the parcel is at least two hundred fifty thousand dollars but less than five hundred thousand dollars;

(iii) Sixty dollars if the taxable value of the parcel is at least five hundred thousand dollars but less than one million dollars; or

(iv) Eighty-five dollars if the taxable value of the parcel is at least one million dollars[.]²

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

² Neb. Rev. Stat. § 77-5013(3), LB 4 (Feb. 12, 2020).

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. § 77-1502.³ When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.⁴ 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.⁵

III. FINDINGS OF FACT

The Commission's appeal form was revised in February 2020. On August 27, 2020, the Commission received an appeal filed on an outdated appeal form, an appealable decision of the County Board, a check for \$25, and a second check for \$10. These materials were received in an envelope postmarked August 24, 2020. On August 31, 2020, legal counsel for the Commission notified Appellant that the required filing fee for the appeal was \$40. Appellant submitted an additional \$5 in filing fees on September 28, 2020.

At the jurisdictional show cause hearing, Appellant testified that he received the outdated appeal form from the Antelope County Clerk; the clerk also submitted a written statement informing the Commission that she believed this was the correct appeal form at the time she gave it to Appellant. The form the Appellant was given stated that the filing fee for appeals to the Commission was \$25. At the time Appellant mailed the appeal, someone else at the post office told him they thought the filing fee had gone up by \$10. Appellant did not have a mobile phone, so he was unable to call anyone to confirm whether the filing fee had changed. Appellant placed the second check, for \$10, in the envelope, before mailing the appeal.

IV. ANALYSIS

There is no evidence that the County Board extended the protest hearing deadline, so the deadline to file appeals with the Commission was August 24, 2020.

On February 12, 2020, Governor Ricketts signed into law Legislative Bill (LB) 4, which created a progressive schedule of filing fees for appeals to the Commission; LB 4 contained an

³ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

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

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

emergency clause and became effective the day after it was signed. The amount of the filing fee for a valuation appeal to the Commission now varies from \$40 to \$85 depending upon the taxable value of the parcel that is the subject of the appeal.⁶ In response to this change, the Commission revised its appeal form in February 2020 to inform filers of the correct filing fee information.

An appeal or petition to the Commission is timely filed, and a filing fee is timely received, 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.⁷ The problem in this case is not that Appellant used the outdated appeal form, but rather, that he did not send the full filing fee before the filing deadline.

We regret that Appellant was not able to access our website or call our office to inquire about the requirements for filing an appeal. Ultimately, however, the responsibility for filing the appeal correctly and on time is the responsibility of the person filing the appeal, not the county clerk or the Commission's staff. Nothing in the record suggests that the county clerk acted maliciously when she gave Appellant the outdated appeal form, but even if she did, the longstanding rule in Nebraska is that jurisdiction cannot be created by estoppel. In order for the Commission to have jurisdiction over the appeal, the filing fee needed to be received in full by August 24, 2020, and that did not happen. The Commission does not have jurisdiction to hear the appeal.

V. CONCLUSION

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

THEREFORE IT IS ORDERED:

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

Deb Branstiter
Antelope County Treasurer
PO Box 227
Neligh, NE 68756

Kelly Mueller
Antelope County Assessor
501 Main St Rm 7
Neligh, NE 68756

⁶ Neb. Rev. Stat. § 77-5013(3), LB 4 (Feb. 12, 2020).

⁷ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

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