

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Randall J. Neal,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case Nos. 20R 0367 & 20R 0368

**ORDER FOR DISMISSAL
WITH PREJUDICE**

TERC FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Tax Equalization and Review Commission (TERC) held a jurisdictional show cause hearing on September 30, 2020. Randall J. Neal (the Taxpayer) appeared telephonically. Kim Watson, Dakota County Attorney, appeared telephonically on behalf of the Dakota 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 this appeal.

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.¹ Any action of the County Board pursuant to § 77-1502 may be appealed to TERC 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

III. FINDINGS OF FACT

On August 27, 2020, TERC received two appeals with the required filing fees and copies of the decisions being appealed.³ These materials were received in an envelope postmarked August

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

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

³ The decisions being appealed were styled as COUNTY CLERK'S REPORT FOR 2020, Protest #143 Parcel #220011990 and Protest #144 Parcel #220012245.

25, 2020. The decisions being appealed each stated, “Appeals may be filed on or after July 25, 2020, and on or before August 25, 2020.”

Arika Doddard, who filed the appeals for Appellant, mailed the appeals on August 25, relying on the date listed on the County Board’s decisions. Before filing the appeals, also on August 25, she emailed Dakota County Clerk Joan Spencer to request appeal forms, which Spencer provided. In the email exchange, Spencer told Doddard that the appeal deadline was August 25.

There is no evidence in the record that Dakota County extended the protest hearing deadline for tax year 2020.

IV. ANALYSIS

An appeal or petition to TERC is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to TERC, or received by TERC, on or before the date specified by law for filing the appeal or petition.⁴ The County Board did not extend the deadline for hearing protests, so the filing deadline for tax year 2020 was August 24, 2020.⁵

We find that the County Board and the County Clerk were both in error when advising Neal in the County Board’s decision and in the County Clerk’s email that the appeal deadline was August 25, 2020. However, it is well established under Nebraska law that jurisdiction cannot be created by waiver, estoppel, consent, or conduct of the parties.⁶ In *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, the Nebraska Supreme Court considered a case in which TERC itself listed August 25 as the deadline on its appeal form when the correct deadline was August 24.⁷ The appellant’s appeal was postmarked August 25. The court wrote:

Because TERC had misstated the filing deadline on its own appeal form, TERC invoked what it termed the “doctrine of unique circumstances.” The doctrine is based on estoppel principles and would apparently allow untimely filings to be

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

⁵ Neb. Rev. Stat. § 77-1510 (Reissue 2018). If August 24 falls on a weekend or holiday in any given tax year, the deadline may be extended to the next business day. August 24, 2020, was a Monday.

⁶ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁷ *Id.* Although the statute governing appeal filing has been amended extensively since *Creighton* was decided, the amendments have not affected the principle that TERC cannot enlarge its own jurisdiction, even for equitable reasons.

considered by TERC if the untimeliness was due to reliance on TERC's misstatement of the filing deadline.⁸

TERC is an agency which has only the powers conferred upon it by the Legislature. ... Therefore, TERC does not have the power to apply equitable principles in jurisdictional matters[.] Parties cannot confer subject matter jurisdiction upon a judicial tribunal by either acquiescence or consent, nor may subject matter jurisdiction be created by waiver, estoppel, consent, or conduct of the parties.⁹

The same principles that applied to TERC's misstatement of the filing deadline in *Creighton* also apply to the County Board's and County Clerk's errors in the present case. TERC does not have the power to apply equitable principles in jurisdictional matters, and jurisdiction may not be created by estoppel or conduct of the parties. To be timely, the appeals needed to be mailed by August 24, 2020, and they were not mailed until August 25, 2020. The TERC does not have jurisdiction over the appeals because they were not timely filed.

V. CONCLUSION

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

Robert Giese
Dakota County Treasurer
PO Box 863
Dakota City, NE 68731

Jeff Curry
Dakota County Assessor
PO Box 9
Dakota City, NE 68731

⁸ *Creighton* at 909, 95.

⁹ *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