

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jack M. Hosking,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 20R 0513 & 20R 0514

**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 2:00 p.m. Jack M. Hosking (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

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).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.⁴

III. FINDINGS OF FACT

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

On September 14, 2020, the Commission received two completed appeal forms, a check for \$50 (20R 0513), and a check for \$25 (20R 0514). These materials were received in an envelope postmarked September 10, 2020. One of these appeals was filed by Jack Hosking as an individual property owner; the other was filed by Hosking as an officer of the West Fairacres Homeowners Association. The materials filed did not include copies of any decisions by the County Board or any other information to document such a decision.

At the jurisdictional show cause hearing, Appellant testified that he relied upon instructions on the Commission's appeal form when he did not include with the filing of the appeals any copies of any decisions by the County Board or any other information to document such a decision.

Among the instructions on the Commission's appeal form are the following two paragraphs, which appear consecutively on the second or reverse page of the appeal form:

- Your appeal must include a copy of the decision, action, order, or determination appealed from, or other information that documents the decision, action, order, or determination you are appealing. See 442 Neb. Admin. Code Ch. 5 for examples of what constitutes "other information."
- **DO NOT SEND OTHER EVIDENCE WITH YOUR APPEAL.** When your hearing is scheduled, TERC will send you a Notice of Hearing explaining how to present your evidence.⁶

The front page of the appeal form also states, in part, that appellants must submit a copy of the decision, action, order, or determination appealed.

Appellant did not provide any evidence related to payment of the filing fee for Case No. 20R 0514; the evidence received at the hearing indicates that the County Board set the value of the subject property in that appeal at \$21,000.

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

⁵ Case file.

⁶ Case file.

IV. ANALYSIS

A copy of the County Board’s decision, order, determination, or action, or other information that documents it, 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.⁷ The County Board extended the protest hearing deadline, so the deadline was September 10, 2020; the materials in that envelope were timely filed because the envelope was postmarked September 10, 2020. Appellant did not submit copies of appealable decisions or other information that documented them by the deadline, nor did Appellant submit any additional payment for filing fees by the deadline.

It is well established under Nebraska law that jurisdiction cannot be created by waiver, estoppel, consent, or conduct of the parties; Nebraska courts have enforced statutory filing deadlines even when the Commission’s own appeal form stated the deadlines incorrectly.⁸ Additionally, the required filing fee for Case No. 20R 0514 was \$40,⁹ and Appellant only paid \$25. Appellant failed to timely file the required documentation for either appeal, and Appellant failed to submit the required filing fee for Case No. 20R 0514. The Commission does not have jurisdiction to hear the captioned appeals.

V. CONCLUSION

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

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 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

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

⁸ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁹ Neb. Rev. Stat. § 77-5013(3), LB 4 (February 13, 2020).

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

SIGNED AND SEALED: October 30, 2020

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner