

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

David Mellor,
Appellant,

v.

Saunders County Board of Equalization,
Appellee.

Case No. 20R 0645

**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 11:00 a.m. Joseph C. Byam appeared telephonically on behalf of David Mellor. Joe Dobesh, Saunders County Attorney, appeared telephonically on behalf of the Saunders 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 An appellate tribunal, such as the Commission, cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.² 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.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 See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

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 Subject Property in this appeal is a 54 acre parcel improved with four houses; one additional house was located on the Subject Property but it was destroyed by fire in 2012. Sometime in July 2020, Appellant David Mellor reviewed his property tax statement and discovered that the Saunders County website listed five houses on the Subject Property, including the house that burned down in 2012. Mellor contacted the county assessor, who acknowledged the error.⁵ The county assessor advised Mellor to contact the County Board and request a refund of property taxes overpaid during the three previous years. Mellor filed a property valuation protest in June 2020 regarding the assessed value of the Subject Property, and the County Board reduced the assessed value to reflect four houses rather than five.

On July 29, 2020, Mellor sent a letter to the county treasurer “requesting a refund going back the past three tax years.” On August 18, 2020, the County Board took up the following motion:

Motion by Mach, seconded by Breunig to deny the request for a Tax Refund by David Mellor, Leshara – for [the Subject Property] for taxing years 2017, 2018, and 2019 because the parcel was being assessed with an additional house that was lost to a fire. Denial was made due to the County Assessor’s office being denied access to the property. All as per the recommendation of the County Assessor. Voting yes were [all commissioners]. Voting no were none. Motion carried.⁶

During the jurisdictional show cause hearing, Mellor denied having refused the County Assessor access to the Subject Property. Mellor filed an appeal of the County Board’s decision with the required documentation and filing fee; the appeal was received on September 21, 2020, in an envelope postmarked September 17, 2020.

IV. ANALYSIS

Neb. Rev. Stat. § 77-1734.01 provides, in part:

(2) In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political subdivision of the state or any taxpayer ... the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding[.] A claim for a refund pursuant to this section shall be made in writing to the county treasurer to whom the tax

⁵ See, Exhibit 1:5.

⁶ Case file.

was paid within three years after the date the tax was due or within ninety days after filing the amended return or the correction becomes final.

(3) Before the refund is made, the county treasurer shall receive verification from the county assessor or other taxing official that such error or mistake was made, such adjustment was made, or the amended return was filed or the correction made, and the claim for refund shall be submitted to the county board. Upon verification, the county board shall approve the claim. The refund shall be made in the manner prescribed in section 77-1736.06. Such refund shall not have a dispositional effect on any similar refund for another taxpayer. This section may not be used to challenge the valuation of property, the equalization of property, or the constitutionality of a tax.

Appellant asserts that Neb. Rev. Stat. § 77-5007 gives the Commission jurisdiction over the decision of the County Board. That section lists fifteen distinct classes of appeals over which the Commission has jurisdiction, concluding with a catch-all provision: “(16) Any other decision, determination, action, or order *from which an appeal to the commission is authorized.*”⁷ Crucial to this catch-all provision is the requirement that an appeal to the Commission be authorized, i.e., by the statutory scheme that gives rise to the decision of the county board.

“The right of appeal in this state is clearly statutory, and unless the statute provides for an appeal from the decision of a quasi-judicial tribunal, such right does not exist. And if these statutes create such a right, the mode and manner of appeal is statutory and such jurisdiction can only be conferred in the manner provided by statute.”⁸ 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.⁹ Accordingly, in order for the Commission to have jurisdiction over this appeal, there must be a clear statutory right to appeal. Appellant has not shown that an appeal to the Commission from a decision of a County Board denying a refund under Neb. Rev. Stat. § 77-1734.01 is authorized by § 77-1734.01 or any other statute. In the absence of specific statutory authority, the Commission does not have jurisdiction to hear the appeal.

V. CONCLUSION

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

⁷ Neb. Rev. Stat. § 77-5007 (Reissue 2018), *emphasis added*.

⁸ *Boone County Bd. of Equalization v. Nebraska Tax Equalization and Review Com’n.*, 9 Neb.App. 298, 302, 611 N.W.2d 119, 123, (Neb.App 2000), citing *Lydick v. Johns*, 185 Neb. 717, 719, 178 N.W.2d 581, 582-83 (1970) (quoting *Peck v. Dunlevey*, 184 Neb. 812, (1969)).

⁹ *Creighton* at 921, 102 (2000).

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

Amber Scanlon
Saunders County Treasurer
PO Box 337
Wahoo, NE 68066

Rhonda Andresen
Saunders County Assessor
433 N Chestnut Ste 200
Wahoo, NE 68066

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

SIGNED AND SEALED: November 16, 2020

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner