

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Susan K. Shea,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 20R 0647

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on November 17, 2020. Susan K. Shea (the Taxpayer) 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 passed a resolution extending the protest hearing deadline for tax year 2020.⁵ On September 21, 2020, the Commission received the Taxpayer's appeal in an envelope postmarked September 19, 2020. The envelope contained a completed appeal form,⁶ an appealable decision of the County Board, and the required filing fee.

At the jurisdictional show cause hearing, the Taxpayer testified that she received the County Board's decision, which was dated August 10, 2020. She did not recall what day she received the decision. Before receiving the decision, the Taxpayer had surgery and was prescribed pain medication, so she did not have a clear mind when reviewing the County Board's decision and determining how to respond to it. The Taxpayer was also under restrictions from her surgeon not to use her dominant right arm, which affected her ability to complete the appeal form. The Taxpayer also mistakenly believed that she was required to submit all supporting documentation with the appeal form. In addition to these factors, the Taxpayer initially believed that her appeal was governed by Neb. Rev. Stat. § 77-1504, which provides an appeal deadline of October 30 in a county which has extended the protest hearing deadline. When the Taxpayer completed and signed the appeal form on September 10, 2020, she did so using her right arm against her doctor's recommendation.

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 19.⁷ Although both statutes relate to the work of county boards of equalization determining the assessed value of real property in Nebraska, they create different

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 The appeal form was dated September 10, 2020. Had it been mailed and postmarked the day it was signed and dated, the appeal filing would have been timely.

⁷ See also Neb. Rev. Stat. § 77-1315.01 (Reissue 2018).

legal processes, initiated by different parties, with different deadlines for filing appeals with the Commission.⁸ The deadline to file appeals with the Commission is August 24 or September 10 for appeals filed pursuant to § 77-1502,⁹ and October 15 or October 30 for appeals filed pursuant to § 77-1504.¹⁰

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.¹¹ Because the County Board extended the protest hearing deadline, the deadline to file an appeal of a decision made pursuant to Neb. Rev. Stat. § 77-1502 was September 10. The Taxpayer's appeal was received on September 21 in an envelope postmarked September 19. Although the Taxpayer initially believed that the applicable statute was Neb. Rev. Stat. § 77-1504, she acknowledged at the hearing that § 77-1502 was the controlling statute. That is consistent with the County Board's decision, which makes reference to § 77-1502 and specifically states that the appeal deadline was September 10, 2020.

We are not indifferent to the medical challenges the Taxpayer described at the hearing, but the filing deadline was set by the Legislature, and the Legislature did not include an exception for illness or incapacity, nor does the Commission have equitable power to extend the filing deadline under such circumstances. Moreover, as noted above, the rule in Nebraska is that subject matter jurisdiction cannot be created by waiver, estoppel, consent, or conduct of the parties.¹² The Taxpayer's appeal was not received by the statutory deadline. 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.

⁸ See Neb. Rev. Stat §§ 77-1502, 77-1504 (Reissue 2018).

⁹ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-1504 (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

¹² *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

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

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

SIGNED AND SEALED: November 23, 2020

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner