

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mid America Agri Products,
Wheatland Industries LLC,
Appellant,

Case No. 21C 0044

ORDER FOR DISMISSAL

v.

Perkins County Board of Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on September 7, 2021. Zachary Lutz-Priefurt appeared telephonically on behalf of Appellant Mid America Agri Products, Wheatland Industries LLC (Mid America). Timothy L. Moll appeared telephonically on behalf of the Perkins 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. Exhibits 1-5 and 8-11 were received.

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

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).

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

III. FINDINGS OF FACT

This appeal relates to a parcel of real property in Perkins County (the Subject Property). The Subject Property was assessed at \$13,385,246 for tax years 2019, 2020, and 2021.⁵ Peggy Burton, Perkins County Assessor (the County Assessor) sent a notice of valuation change for the parcel in 2019, because the assessed value of the parcel changed from the previous tax year. She did not send notices of valuation change for 2020 or 2021 because the assessed value of the parcel did not change in those years.⁶

On July 1, 2021, attorney George Clough hand delivered a protest for the 2021 assessed value of a parcel of property owned by Mid America to Rita Long, Perkins County Clerk (the County Clerk). The County Clerk took the protest and gave Clough a file-stamped copy. She informed Clough that protests would be heard on July 19, 2021. On July 2, 2021, the County Clerk sent Clough a letter informing him that he had missed the June 30 deadline to file a protest, and that the County Board would not hear the protest because of the missed deadline.⁷

Witnesses disagreed as to whether the protest was discussed by the County Board during the July 19 board meeting. Clough attested that he was present at the meeting and that “the County Board permitted 15 minutes of argument and discussion concerning the protest.”⁸ County Board members Ron Hagan and Steve Tucker both attested that the County Board discussed Mid America’s 2018, 2019, and 2020 appeals at the meeting, but that “no discussion took place regarding the valuation of the Appellant’s real property for 2021.”⁹ Mid America appealed to the Commission.

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

⁵ Exhibits 5:1, 8:1-2.

⁶ Exhibit 8:1-2.

⁷ See Exhibit 4.

⁸ Exhibit 1:2.

⁹ Exhibits 9:1-2, 11:1-2.

IV. ANALYSIS

“Protests regarding real property shall be signed and filed after the county assessor’s completion of the real property assessment roll ... and on or before June 30.”¹⁰ “If the protest is not timely filed, it will automatically be dismissed.”¹¹ The commission has the power and duty to hear and determine appeals of any decision of any county board of equalization.¹² When a county board of equalization erroneously dismisses a protest, the Commission has authority to correct the erroneous dismissal.¹³ When a county board correctly dismisses a protest because it lacked statutory authority to hear the protest on the merits, the Commission should decline to reach the merits of the appeal and affirm the dismissal of the county board.¹⁴

Mid America asserts that the County Board is an administrative agency of Perkins County, and that “the failure to comply with such administrative bodies does not inherently deprive the lower administrative agency of jurisdiction.”¹⁵ Mid America asserts that the County Board waived any issues concerning the timeliness of the protest by “accepting” the protest and telling Clough when a hearing would be held. At that point, according to Mid America, the County Board was estopped from dismissing the protests based upon the late filing. Mid America further asserts that, having allowed argument on the issue during a county board meeting, the County Board is estopped from asserting that the defective filing date is a basis for the Commission being deprived of jurisdiction. In a letter that accompanied the original protest, Clough asserted that the county assessor failed to provide a valuation notice “as is required by State Law,”¹⁶ but Mid America did not advance that argument at the hearing before the Commission.

On jurisdictional issues, we have consistently applied the rule that parties “cannot confer subject matter 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.”¹⁷ Equitable estoppel is not normally applied in administrative proceedings.¹⁸ The Commission has not had

¹⁰ Neb. Rev. Stat. § 77-1502(1) (Reissue 2018).

¹¹ 350 Neb. Admin. Code, Ch. 10 § 003.03A.

¹² Neb. Rev. Stat. § 77-5007(10) (Reissue 2018) (emphasis added); *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 540, 873 N.W.2d 201, 207 (2016).

¹³ See *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 542, 873 N.W.2d 201, 207 (2016).

¹⁴ Cf. *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 541-42, 873 N.W.2d 201, 207-08 (2016).

¹⁵ Appellant’s Brief at 3. The citations of law given in support of this proposition are from Connecticut and Florida courts, and they are not mandatory authority in Nebraska.

¹⁶ Exhibit 3:1.

¹⁷ *Creighton*, 620 N.W.2d at 102.

¹⁸ *In re 2007 Appropriations of Niobrara River Waters*, 283 Neb. 629, 650, 820 N.W.2d 44, 62 (2012).

equitable power since Neb. Rev. Stat. § 77-1511 was repealed in 2001,¹⁹ and even if the Commission had equitable power, “when a statute provides an adequate remedy at law, equity will not entertain jurisdiction, and a party must exhaust the statutory remedy before it may resort to equity.”²⁰

The County Assessor was not required to send Mid America a notice of valuation change for tax year 2021 because the assessed value of the Subject Property did not change from the previous tax year.²¹ If the Subject Property was assessed in excess of its actual value, or not equalized with other comparable properties, a statutory remedy exists. That remedy begins with the filing of a protest with a county board of equalization “on or before June 30.”²²

Mid America did not file its protest on or before June 30. It does not dispute that the filing was late, and it did not provide evidence that a failure of notice prevented it from filing a timely protest.²³ The applicable regulations, which have the force and effect of statutory law,²⁴ provide for automatic dismissal of a protest that is not timely filed. When a statute requires a county board of equalization to dismiss a protest, the county board does not have authority to do anything except dismiss the protest.²⁵ The County Board correctly dismissed the protest via the County Clerk’s July 2 letter because the protest was not timely filed.²⁶ When a county board correctly dismisses a protest because it lacked statutory authority to hear the protest on the merits, the Commission should decline to reach the merits of the appeal and affirm the dismissal of the county board. We affirm.

V. CONCLUSION

The captioned appeal should be dismissed.

THEREFORE IT IS ORDERED:

1. The captioned appeal is dismissed with prejudice.

¹⁹ See Laws 2001, LB 465, § 12.

²⁰ *Bock v. Dalbey*, 283 Neb. 994, 1001, 815 N.W. 2d 530, 536 (2012).

²¹ Exhibit 3:1.

²² Neb. Rev. Stat. § 77-1502(1) (Reissue 2018).

²³ See Neb. Rev. Stat. § 77-1507.01 (Reissue 2018).

²⁴ *Ash Grove Cement Co. v. Nebraska Dept. of Rev.*, 306 Neb. 947, 963, 947 N.W.2d 731, 743 (2020).

²⁵ *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 539-540, 873 N.W.2d 201, 206 (2016).

²⁶ A preponderance of the evidence does not support a finding that the County Board considered the 2021 protest at the July 19 board meeting, but even if it did, jurisdiction cannot “be created by waiver, estoppel, consent, or conduct of the parties.”

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

Julie Sestak
Perkins County Treasurer
PO Box 357
Grant, NE 69140

Peggy Burton
Perkins County Assessor
PO Box 248
Grant, NE 69140

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

SIGNED AND SEALED: October 27, 2021

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner