

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Allen W. Doub,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 21C 1144

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 22, 2021. Attorney Oliver Jenkins appeared telephonically on behalf of Allen W. Doub. 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 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.³ If the body from which an appeal was taken lacked jurisdiction, then the appellate tribunal acquires no jurisdiction. When an appellate tribunal is

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

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

³ See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

without jurisdiction to act, the appeal must be dismissed.⁴ 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.⁵

III. FINDINGS OF FACT AND ANALYSIS

The Douglas County Board of Equalization extended the protest hearing deadline pursuant to Neb. Rev. Stat. § 77-1502,⁶ so the deadline to file an appeal of a decision of the County Board was September 10, 2021.

Tracey Curtis is an employee of Omega Chemical, a business owned by Appellant Allen Doub, which occupies the property that is the subject of the appeal. During early September 2021, Curtis tested positive for COVID-19 and was isolated away from work. She was unable to coordinate the appeal process for Doub while in isolation. When Curtis was able to return to work, she arranged for the appeal paperwork to be completed. The appeal was hand delivered to the Commission on September 14, 2021. Based on these facts, Appellant requested an “equitable tolling” of the filing deadline.

The Commission has only that authority specifically conferred upon it by the Constitution of the State of Nebraska, by Nebraska State Statutes, or by construction necessary to achieve the purpose of the relevant provisions or act.⁷ The Commission does not generally have equitable powers. Therefore, when presented with claims that sound in equity, the Commission does not have the power to render equitable decisions without express constitutional or statutory authority.⁸

The deadline established by statute was September 10, 2021. No provision of law allows extension of the deadline except where a failure to give notice prevented the timely filing of a protest or appeal. There is no allegation that a failure of notice occurred in this case. The appeal

⁴ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

⁵ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁶ Case file.

⁷ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

⁸ From the time of its inception in 1995 until 2001, the Commission was authorized by statute to hear appeals “as in equity.” See e.g., 1995 Neb. Laws LB 490, § 153; 2001 Neb. Laws LB 465 §7; 2004 Neb. Laws LB 973 §51. This was the same language that had previously applied to valuation appeals heard by the district courts prior to the creation of the Commission. In 2007, the Legislature repealed the section of statute which had authorized the Commission to hear appeals “as in equity.” See, 2007 Neb. Laws LB 167, § 6.

was not timely filed. The Commission does not have jurisdiction over the appeal, and the appeal should be dismissed.

IV. CONCLUSION

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

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 St Rm H09
Omaha, NE 68183-1000

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