

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Catherine A. Evans,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No. 21R 0559

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 25, 2021. Catherine A. Evans appeared telephonically. Andrea Gosnold-Parker, Deputy Sarpy County Attorney, appeared telephonically on behalf of the Sarpy County Board of Equalization. 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 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.³

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

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

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

III. FINDINGS & ANALYSIS

On August 30, 2021, the Commission received an appeal form signed by Catherine A. Evans with the required filing fees and documentation of an appealable decision. These materials were received in an envelope postmarked August 27, 2021. There is no evidence to show that the Sarpy County Board of Equalization extended the protest hearing deadline pursuant to Neb. Rev. Stat. § 77-1502, so the deadline to file an appeal with the Commission was August 24, 2021.

Evans conceded that she did not read the appeal form carefully and did not file the appeal on or before August 24, 2021. She explained that a county employee informed her she had either 30 days⁴ or until August 31⁵ to file an appeal. She further testified that extremely difficult life circumstances contributed to the late filing.

Under Nebraska law, jurisdiction cannot be created by estoppel or consent, so even if a county employee misinformed Evans about the deadline, that does not grant the Commission jurisdiction. And although we are not indifferent to the life circumstances described by Evans, the Commission does not have the power to render equitable decisions without express constitutional or statutory authority.⁶ There must be strict compliance with the statutory time requirements for the Commission to acquire jurisdiction over the subject matter of an appeal.⁷ Evans's appeal was not filed by the statutory deadline. 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 Sarpy County Treasurer, and the officer charged with preparing the tax list for Sarpy County as follows:

⁴ Testimony of Evans.

⁵ Letter from Evans dated September 26, 2021, case file.

⁶ 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.

⁷ *Republic Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 721, 725, 811 N.W.2d 682, 686 (2012) (citation omitted).

Trace Jones
Sarpy County Treasurer
1102 E 1st Street
Papillion, NE 68046

Dan Pittman
Sarpy County Assessor
1210 Golden Gate Dr #1200
Papillion, NE 68046

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

SIGNED AND SEALED: October 28, 2021

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner