

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW  
COMMISSION**

First Baptist Church,  
Appellant,

v.

Cass County Board of  
Equalization,  
Appellee.

Case No. 22E 0952

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on November 8, 2022 at 3:00 PM. Pastor Raymond Wicks appeared telephonically on behalf of First Baptist Church (the Taxpayer). Christopher Perrone, Deputy Cass County Attorney, appeared telephonically on behalf of the Cass 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.<sup>1</sup> 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

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<sup>1</sup> Neb. Rev. Stat. § 77-5013 (Reissue 2018).

Neb. Rev. Stat. § 77-1502.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

### III. FINDINGS OF FACT

On October 20, 2022, the Commission received an envelope from the Taxpayer containing an appeal form, the requisite filing fee, a copy of a decision of the County Board, and a letter and copy of an envelope. The Taxpayer's appeal form alleged a due process violation in that the County Board failed to provide notice of hearing as well as failure to provide timely notice of an adverse decision.

The Form 451 provided by the Taxpayer shows that it was signed by the Taxpayer on June 8, 2022. A date stamp of June 9, 2022 establishes receipt by the Cass County Assessor on that date. A County Board member signed the Form 451 denying Taxpayer's exemption application on July 5, 2022.

The Taxpayer also submitted a copy of an October 13, 2022, letter further explaining that Pastor Wicks contacted the Cass County Assessor's office on October 6, 2022, to inquire about the status of their exemption application and was informed of the denial. The envelope copy, postmarked on October 13, 2022, allegedly contained a copy of the Form 451 showing the exemption denial.

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<sup>2</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

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

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

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

#### IV. ANALYSIS

Nebraska Revised Statutes § 77-202.02 states, in relevant part:

The county board of equalization, between February 1 and June 1 after hearing on ten days' notice to the applicant and the publication of recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Tax Commissioner.

Nebraska Revised Statutes §77-202.04(1) states in relevant part:

Notice of a county board of equalization's decision granting or denying an application for exemption from taxation for real or tangible personal property shall be mailed or delivered to the applicant and the county assessor by the county clerk within seven days after the date of the board's decision.

At the November 8, 2022, hearing, Pastor Wicks alleged that the Taxpayer did not receive proper notice of the required hearing, nor did they receive proper notice of the County Board's adverse decision, and therefore, was unable to timely protest the denial.<sup>6</sup> However, Pastor Wicks admits that the Taxpayer's address on the filed Form 451 contains a typographical error and is not the actual address of the Taxpayer.

The County Board called Gerri Draper, Cass County Clerk, to testify. Draper stated that she did not know who was responsible for sending notice of the hearing required by § 77-202.02, but that it was not the responsibility of her office to do so. Draper further testified that following the County Board's hearing and denial, her office sent a copy

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<sup>6</sup> Neb. Rev. Stat. § 77-202.04(3) provides that if a failure of a county board to give notice prevents a taxpayer from timely filing an appeal with the Commission, then the taxpayer shall have until December 31 of that year to petition the Commission.

of the decision to the Taxpayer, at the address listed on the Form 451, per standard business practice.

The Nebraska Court of Appeals has ruled on a similar situation in *Wash. County Bd. of Equalization v. Rushmore Borglum Ministries, Inc.*, 11 Neb. App. 377, 650 N.W.2d 504 (2002). In that case, the parties stipulated that Rushmore, who was seeking tax exemption, did not receive the notice of hearing required by § 77-202.02. The parties did stipulate to receiving notice of the County Board's denial of exemption. Rushmore did not appeal that denial until after the County Board, sua sponte, reconsidered its own decision more than one month later and again denied the exemption. Rushmore appealed the second denial to the Commission. The Commission reversed the denial, and the County Board appealed.

On appeal, the Court of Appeals held that the Commission was without authority to hear the appeal. The majority reasoned that County Board did not have authority to reconsider its own decision outside of the statutory appeal period. Because the parties had stipulated to the receipt of the first exemption denial, Rushmore Borglum had thirty days from the date of that initial denial to appeal to the Commission. Because no appeal was filed, the decision became final. While the Court did not condone the failure to provide the required notice of hearing to Rushmore, it held that the proper remedy was to appeal the initial exemption denial.

We find the Court's reasoning applicable in this case. As in *Rushmore*, the Taxpayer did not receive notice of the required hearing under § 77-202.02. The County Board presented no evidence to rebut the Taxpayer's testimony on that point.

In contrast to *Rushmore*, the Taxpayer in the present appeal alleges that they did not receive notice of the exemption denial until October 17, 2022. However, Draper's testimony demonstrates that notice was mailed out, per her office's regular business practice, on or about July 5, 2022. The Taxpayer did not provide evidence or testimony to rebut Draper's testimony.

The Nebraska Supreme Court has afforded a presumption of regularity to public officers in performing their official acts, absent evidence of misconduct or disregard of the law<sup>7</sup>. Here, the Commission finds that the testimony of Pastor Wicks regarding non-receipt of the exemption denial is not sufficient to rebut the presumption and testimony that the Cass County Clerk timely mailed a copy of the exemption denial on or about July 5, 2022, to the address listed on the Form 451. Additionally, Pastor Wicks admits to the incorrect address being listed on the form.

The Commission finds that the County Board properly discharged its duty to mail a copy of the exemption denial to the address listed on the Form 451. The County Board is not at fault for an incorrect address being listed on the form. Accordingly, the Taxpayer had thirty days from the date of denial, July 5, 2022, to perfect an appeal to the Commission. The taxpayer did not do so. Therefore, the Commission lacks authority to hear this appeal on the merits.

## V. 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 Cass County Treasurer, and the officer charged with preparing the tax list for Cass County as follows:

Cindy Fenton  
Cass County Treasurer  
346 Main St Rm 203  
Plattsmouth, NE 68048

Teresa Salinger  
Cass County Assessor  
145 N 4th St  
Plattsmouth, NE 68048

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<sup>7</sup> See *Windstream Communs., Inc. v. Neb. Pub. Serv. Comm'n (In re Skrdlant)*, 305 Neb. 635, 641, 942 N.W.2d 196, 200 (2020); *State v. Hess*, 261 Neb. 368, 377, 622 N.W.2d 891, 900-01 (2001).

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

**SIGNED AND SEALED:** November 22, 2022

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Steven A. Keetle, Commissioner

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James D. Kuhn, Commissioner