

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

Jeffery C. Glenn,  
Appellant,

Case No. 22H 0933

v.

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

Sarpy County Board of  
Equalization,  
Appellee.

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on November 8, 2022 at 2:00 PM. Jeffery C. Glenn (the Taxpayer) appeared telephonically. Andrea Gosnold-Parker, Deputy Sarpy County Attorney, appeared telephonically on behalf of the Sarpy 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

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

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.<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 September 16, 2022, the Commission received a U.S.P.S. Priority Mail envelope postmarked September 14, 2022. Inside that envelope were an appeal form dated September 12, 2022; a 2022 homestead exemption application dated June 30, 2022; a cover letter requesting retroactive homestead exemption from tax years 2016 to 2020 as well as tax year 2021; a notice of homestead exemption rejection dated July 11, 2022; a July 11, 2022, letter from the Sarpy County Assessor; an undated letter from the Taxpayer to the Sarpy County Clerk protesting the July 11, 2022 rejection; an August 9, 2022 email to the Taxpayer providing notice of an August 16, 2022 protest hearing; a copy of the County Board's August 16, 2022 denial of Taxpayer's protest; and copies of emails between the Taxpayer and Sarpy County Clerk staff directing the Taxpayer to the Commission's website for information on appeals.

On September 19, 2022, Legal Counsel for the Commission sent a letter to the Taxpayer advising, based upon Nebraska law, the Commission would likely not have the authority to hear his appeal; but

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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).

also advised the Taxpayer of his right to request a hearing to determine whether the Commission may hear his appeal on the merits.

On October 20, 2022, the Commission received a further letter from the Taxpayer, which was construed by the Commission as a request for a jurisdictional hearing regarding the 2016-2020 and 2021 exemption status of the Subject Property.

#### **IV. ANALYSIS**

##### **A. Tax years 2016-2020**

Nebraska Revised Statutes § 77-3512 govern the procedure for filing homestead exemptions. It states:

It shall be the duty of each owner who wants a homestead exemption under section 77-3506, 77-3507, or 77-3508 to file an application therefor with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for that year, except that:

- (1) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year;
- (2) An owner may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the owner's ability to file the application in a timely manner; and
- (3) An owner may file a late application pursuant to section 77-3514.01 if he or she includes a copy of the death certificate of a spouse who died during the year for which the exemption is requested.

The late filing provisions of Neb. Rev. Stat. § 77-3514.01 allow for filing “with the county assessor on or before June 30 of the year in which the real estate taxes levied on the property for the current year become delinquent.”

Glenn’s June 30 letter to the Sarpy County Assessor alleges that between tax years 2016 – 2020, Glenn was dealing with the death of both parents and handling those estate matters. Though the Commission sympathizes with Glenn’s situation, Neb. Rev. Stat. § 77-3512 clearly indicates that Glenn’s failure to timely file a homestead exemption application waived his right to an exemption for those tax years.

### **B. Tax year 2021**

Glenn did not allege, or provide evidence of, filing for homestead exemption for tax year 2021 prior to June 30, 2021. Nor does he allege, or provide documentation of, a medical condition or spousal death which impaired his ability to timely file a homestead application for tax year 2021. Accordingly, the Commission finds that Glenn’s application for homestead exemption for tax year 2021 is not timely.

### **C. The County Board’s lack of authority**

An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.<sup>6</sup> “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”<sup>7</sup>

The Nebraska Supreme Court recently upheld this proposition in *Mid America Agri Prods. v. Perkins Cty. Bd. of Equal.*, 342 Neb. 341, \_\_\_ N.W. 2d \_\_\_ (2022). In that case, a taxpayer did not timely file a protest with the county board of equalization. Due to the untimely protest, the county board denied the appeal, finding that it lacked authority to decide the untimely appeal on the merits. The taxpayer appealed to the Commission, asserting that the county board’s dismissal was an exercise of authority which waived the timeliness defect. The Commission found that it too lacked the authority to hear

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<sup>6</sup> See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>7</sup> *Carlos H. v. Lindsay M.*, 283 Neb. 1004 (2012).

the merits of the appeal, because as the county board lacked jurisdiction, so too did the Commission. The Court held that the Commission's finding that it lacked authority to hear the merits of the appeal was correct because the county board lacked statutory authority to hear the protest on the merits due to the taxpayer's untimely filing.

That same principle is applicable here. As Neb. Rev. Stat. § 77-3512 provides that failure to file constitutes a waiver of the exemption, the County Board lacked any authority to do anything with Glenn's application except dismiss it. Because the County Board lacked any authority to grant or deny Glenn's application on the merits, the Commission likewise lacks authority to grant or deny Glenn's application on the merits.

## V. CONCLUSION

The Commission does not have jurisdiction or authority 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:

Trace Jones

Sarpy County Treasurer

1102 E 1st Street

Papillion, NE 68046

Dan Pittman

Sarpy County Assessor

1102 E 1st St, Ste 2

Papillion, NE 68046

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