

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Doran W. Jessee,
Appellant,

v.

Dundy County Board of Equalization,
Appellee.

Case No. 22R 0455

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on September 29, 2022 at 9:00 A.M. Doran Jessee (the Taxpayer) appeared telephonically. Gary Burke, Dundy County Attorney, appeared telephonically on behalf of the Dundy 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 These filing requirements are jurisdictional.² 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. § 77-1502.³ 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.⁴ If the body from which an appeal was taken lacked jurisdiction, then the appellate tribunal acquires no jurisdiction.

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

² *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 540, 873 N.W.2d 201, 206 (2016); Neb. Rev. Stat. § 77-5013(1) (Reissue 2018).

³ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

⁴ See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

When an appellate tribunal is without jurisdiction to act, the appeal must be dismissed.⁵ 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.⁶

III. FINDINGS OF FACT & ANALYSIS

On August 25, 2022, the Commission received an envelope containing an appeal of the determination of the Dundy County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502. That envelope did not contain a copy of the decision, order, determination, or action appeal from, or other information that documents the decision, order, determination, or action appealed from (BOE Decision).

Legal counsel for the Commission sent the Taxpayer a letter advising of the deficiency and informing the Taxpayer of the right to request a hearing to show cause why his appeal should not be dismissed for failure to timely file all statutorily required materials. The Taxpayer subsequently submitted a copy of the Dundy County Board's determination which was received by the Commission on September 6, 2022, along with a letter requesting a hearing.

During the scheduled September 29, 2022, hearing, the Taxpayer admitted under oath that he was in a hurry to get his appeal mailed out and failed to include the copy of the County Board's decision. The Taxpayer also testified that the BOE Decision he received was not signed by the County Clerk, which further delayed him as he had to contact the County Clerk to receive a signed copy of that decision. The unsigned copy of the BOE Decision was not provided in evidence. The copy of the BOE Decision received by the Commission on September 6, 2022, shows that the County Clerk signed the Decision on July 19, 2022.⁷

The deadline for filing the appeal for tax year 2022 was on August 24 or on September 10 if the county has adopted a resolution to extend the deadline for hearing protests under Section 77-1502.⁸ The Dundy County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2022 was August 24, 2022.

The appeal is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission, or received by the Commission on or before

⁵ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

⁶ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁷ See Case File.

⁸ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

the date specified by law for filing the appeal.⁹ The envelope received by the Commission on August 25, 2022, did not contain a copy of the BOE Decision. The envelope containing the BOE Decision was postmarked September 3, 2022, and received by the Commission on September 6, 2022. Therefore, the Commission determines that the appeal was not timely filed as all materials required by Neb. Rev. Stat. § 77-5013 were not received by the Commission on or before August 24, 2022.

IV. CONCLUSION

Since the filing requirements of § 77-5013 are jurisdictional, 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 Dundy County Treasurer, and the officer charged with preparing the tax list for Dundy County as follows:

Penny Denny
Dundy County Treasurer
PO Box 425
Benkelman, NE 69021

Tish Burrell
Dundy County Assessor
PO Box 487
Benkelman, NE 69021

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

SIGNED AND SEALED: October 12, 2022

Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁹ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).