

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

RC Blackledge,
Appellant,

Case No. 22R 0676

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Lancaster County Board of
Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 12, 2022. David C. Solheim, Attorney appeared telephonically on behalf of RC Blackledge (the Taxpayer). Daniel J. Zieg, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster 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

¹ 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. § 77-1502.² 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 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

The Taxpayer, on or prior to June 30, 2022, submitted a handwritten protest to the Lancaster County Assessor's office. At a later date, the Taxpayer's letter was forwarded to the Lancaster County Clerk's office.

In a letter dated August 11, 2022, the Lancaster County Clerk informed the Taxpayer that the letter did not comply with Neb. Rev. Stat. § 77-1502(2), and that as the attempted protest letter did not comply with Nebraska law, the Lancaster County Board was without authority to accept the protest and the County Board "unanimously voted on August 9, 2022, to dismiss your property valuation protest⁶."

IV. ANALYSIS

The Taxpayer argues that, despite the clear failure to use the prescribed form, he substantially complied with the requirements to file a protest with the County Board. The Taxpayer argues that he received no notice of the new requirement to use any prescribed form.

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).

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 Ex. 2.

Nebraska Revised Statute § 77-1502(2) sets forth the requirements for a taxpayer to file a property valuation protest with the County Boards. The first sentence requires: “Each protest shall be made on a form prescribed by the Tax Commissioner, signed, and filed with the county clerk of the county where the property is assessed.” The statute clearly requires the Taxpayer to use Tax Commissioner’s or county’s prescribed forms. While this requirement reflects a very recent change in the statute which took effect on January 1, 2022, it is a long-held maxim that everyone is presumed to know the law⁷. This maxim is applicable in this case. The Taxpayer is presumed to know the current requirements to perfect a protest to the County Board.

The Taxpayer further argues that because the County Board voted to dismiss the appeal on August 9, 2022, that exercise of discretion and authority provides a basis to appeal to the Commission. We disagree.

The Nebraska Supreme Court has held that a protest which fails to contain or attach the reasons for a protest, must be dismissed by the County Board as required by statute⁸. Neb. Rev. Stat. § 77-1502(2) states in relevant part:

If the protest does not contain or have attached the statement of the reason or reasons for the protest, including the requested valuation, or the applicable description of the property, the protest shall be dismissed by the county board of equalization. Counties may make reasonable efforts to contact protestors who have timely filed a protest but have either filed incomplete information or not used the required form.

While the statute explicitly directs the County Board to dismiss a protest which lacks a stated reason, requested valuation, or applicable description, the requirement that a taxpayer use the prescribed form employs the same mandatory language – “Each protest *shall* be made on a form...”, “[t]he protest *shall* contain or have attached a statement of the reason...”, “...a description adequate to identify each parcel *shall*

⁷ See *Vyhlidal v. Vyhlidal*, 311 Neb. 495, 507, 973 N.W.2d 171, 181 (2022).

⁸ *Village at North Platte v. Lincoln Cty. Bd. of Equal.*, 292 Neb. 533, 873 N.W.2d 201 (2016).

be provided.” Further, when a taxpayer fails to provide a reason, requested valuation or applicable description, Neb. Rev. Stat. § 77-1502(2) expressly directs that the appeal “*shall* be dismissed by the county board of equalization.”

The Legislature has, by the plain language of the statute, required that valuation protests shall be filed on a specified form, and contain specified information. Non-compliance with these requirements result in a directive for the county board to dismiss non-compliant appeals. Therefore, the Taxpayer’s argument that the County Board necessarily exercised discretion or other authority in denying Taxpayer’s appeal must fail.

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.⁹ “[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.”¹⁰

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 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

⁹ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

¹⁰ *Carlos H. v. Lindsay M.*, 283 Neb. 1004 (2012).

authority to hear the protest on the merits due to the taxpayer's untimely filing.

In summary, because the taxpayer is presumed to know what the law is, the taxpayer's failure to timely file a protest that complies with Nebraska law prevented the County Board from having statutory authority to do anything except dismiss Taxpayer's appeal. Likewise, because the County Board lacked the statutory authority to hear the appeal on the merits, the Commission likewise has no authority to hear the appeal on the merits and must dismiss Taxpayer's appeal.

V. CONCLUSION

The Commission does not have 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 Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster County as follows:

Rachel Garver
Lancaster County Treasurer
555 S. 10th St, Rm 102
Lincoln, NE 68508

Rob Ogden
Lancaster County Assessor
555 S. 10th St, Rm 102
Lincoln, NE 68508

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

SIGNED AND SEALED: November 4, 2022.

Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner