

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

Robert L. Kucera,
Appellant,

Case No. 23H 0611

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Dodge County Board of
Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 13, 2023 at 1:00 PM. Robert L. Kucera (the Taxpayer) appeared telephonically. Pamela Hopkins, Deputy Dodge County Attorney, appeared telephonically on behalf of the Dodge 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 August 24, or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under

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

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

On August 29, 2023, the Commission received an appeal form, filing fee, and copy of a Dodge County Board of Equalization decision denying the Taxpayer's application for a homestead exemption for tax year 2023.

Robert Kucera stated on or about August 17, after receiving notification from the U.S. Department of Veterans Affairs of his one hundred percent service-connected permanent disability, he filed his application for homestead exemption. Kucera received notice from the County Board rejecting his homestead exemption on August 24.

Kucera testified he did not file for homestead exemption until he received his disability determination from the Department of Veterans Affairs, as he believed he was not eligible to receive any exemption until his disability determination was made.

IV. ANALYSIS

Nebraska Revised Statutes § 77-3506(2)(a) states “[a] veteran who was discharged or otherwise separated with a characterization of

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).

honorable or general (under honorable conditions),” and received disability benefits “from the United States Department of Veterans Affairs because of one hundred percent service-connected permanent disability, and who is not eligible for total exemption under sections 77-3526 to 77-3528,” may apply for a homestead exemption.

Neb. Rev. Stat. § 77-3512 outlines and controls the procedure for filing a homestead exemption application. Subsection (1) requires a homeowner seeking an exemption to file the application with the county assessor “after February 1 and on or before June 30 of each year...” Subsection (1)(a) provides a county board the opportunity to extend the June 30 filing deadline to July 20. Subsection (2) states a “[f]ailure to file an application as required in subsection (1) of this section shall constitute a waiver of the exemption for the year in which the failure occurred.

“Jurisdiction is the inherent power or authority to decide a case.”⁶ The Commission only has that “authority” which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.⁷

Here, there is no question that Kucera did not file his homestead exemption application until after the June 30 filing deadline and after the July 20 extended filing deadline. Kucera urges the Commission to find jurisdiction due to the circumstances of this case, in which Kucera was not informed by the U.S. Department of Veterans Affairs of his one hundred percent service-connected permanent disability until August 15, 2023, several weeks after the homestead exemption filing deadline. Further, the Department of Veterans Affairs informed Kucera that his one hundred percent service-connected permanent

⁶ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

⁷ *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

disability was effective as of August 2022, well before the filing deadlines.

Kucera’s assertion that the Commission has authority to extend or otherwise waive the filing deadline because the Department of Veterans Affairs did not notify Kucera that he met the eligibility requirements of Neb. Rev. Stat. § 77-3506(2)(a) does not fall within the authority conferred upon the Commission by the Constitution of the State of Nebraska, by Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.

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.⁸ “[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.”⁹ Because Neb. Rev. Stat. § 77-3512 requires applications for homestead exemptions to be filed, at the latest, on or before July 20, the Dodge County Board of Equalization had no authority to extend any further or waive the filing deadlines beyond that date. Therefore, the Commission determines that it also does not have the legal authority to take any action other than dismiss the appeal or petition.

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

⁸ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

⁹ *Carlos H. v. Lindsay M.*, 283 Neb. 1004 (2012).

the Dodge County Treasurer, and the officer charged with preparing the tax list for Dodge County as follows:

Gail Bargstadt
Dodge County Treasurer
PO Box 999
Fremont, NE 68026

Debbie Churchill
Dodge County Assessor
435 N Park Ave, Room 202
Fremont, NE 68025

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

SIGNED AND SEALED: November 1, 2023



Steven A. Keetle, Commissioner

Robert W. Hotz, Commissioner