

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

Micheel J. Hildebrand,  
Appellant,

v.

Cheyenne County Board of  
Equalization,  
Appellee.

Case No. 23R 0217

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on November 14, 2023 at 2:00 PM. Michael J. Hildebrand (the Taxpayer) appeared telephonically. Paul B. Schaub, Deputy Cheyenne County Attorney, appeared telephonically on behalf of the Cheyenne 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

Micheel Hildebrand contends the statutory scheme outlining the Commission’s appeal process is unconstitutional due to an inability for renters to bring an appeal regarding valuation of the rented property. Hildebrand asserts tax increases caused by increased valuations are inevitably passed on to renters in the form of increased rent, yet renters are unable to protest those valuations to the county boards.

Hildebrand further asserts that due to a lack of a “miscellaneous” filing fee, there is in fact no filing fee required for him to bring his appeal.

### IV. ANALYSIS

On August 21, 2023, the Commission received an envelope containing appeal materials regarding a determination of the Cheyenne County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502. The envelope did not contain the applicable \$40.00 filing fee. The deadline for filing the filing fee for tax year 2023 was on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under

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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).

section 77-1502.<sup>6</sup> The Cheyenne County Board did not adopt a resolution extending the deadline for hearing protests, so the filing deadline for tax year was August 24, 2023

A filing fee 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 the date specified by law for filing the appeal.<sup>7</sup>

Neb. Rev. Stat. § 77-5013 sets forth the requirements which must be met before the Commission obtains legal authority to act upon an appeal or petition. Subsection (1)(c) expressly requires “[t]he filing fee, if applicable, is timely received and thereafter paid.”<sup>8</sup> Subsection (3) provides the amount of the required filing fees.<sup>9</sup>

Neb. Rev. Stat. § 77-5013(3)(b) states, “[f]or any other appeal or petition filed with the commission, the filing fee shall be forty dollars.” Contrary to Hildebrand’s assertion, the Commission interprets this clause to encompass all appeals and petitions not “regarding the taxable value of a parcel of real property.”<sup>10</sup> Accordingly, a filing fee of \$40 would be required in this appeal based upon the assessed value of the parcel. Alternatively, Hildebrand’s appeal based upon constitutional grounds would have alternatively required a \$40 filing fee to have been paid prior to the appeal deadline. Therefore, the Commission determines the appeal was not timely filed and perfected.

## 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.

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<sup>6</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>7</sup> Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

<sup>8</sup> Neb. Rev. Stat. § 77-5013(1)(c) (Reissue 2018).

<sup>9</sup> Neb. Rev. Stat. § 77-5013(3) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5013(3)(a) (Reissue 2018).

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

Shelley Bowlin  
Cheyenne County Treasurer  
PO Box 217  
Sidney, NE 69162

Jordan Hajek  
Cheyenne County Assessor  
PO Box 217  
Sidney, NE 69162

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

**SIGNED AND SEALED:** November 20, 2023



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner