

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

Tory C. Moeller,
Appellant,

Case No. 23R 0515

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Cuming 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 9:00 AM. No one appeared on behalf of the Taxpayer. Dan Bracht, Cuming County Attorney, appeared telephonically on behalf of the Cuming 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

The Taxpayer did not appear as ordered by the Commission's August 31, 2023, Notice of Appeal and Order to Show Cause and Notice of Hearing.

IV. ANALYSIS

Commission does not have Jurisdiction

“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

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

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 *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).

⁸ See, e.g., *Lane v. Burt County Rural Public 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.”⁹

The Form 422 protest to the Cuming County Board of Equalization shows it was signed on July 24, 2023, and filed July 27, 2023. Neb. Rev. Stat. § 77-1502(1) requires valuation protests to be filed with the county board of equalization on or before June 30 of each tax year. The Taxpayer’s protest, on its face, is untimely. No evidence or testimony was received to indicate the Taxpayer filed an untimely protest due to any failure of the county to provide timely notice of valuation.¹⁰

Although the County Board acted on the protest and affirmed the assessed value of the Taxpayer’s property, the County Board appears to have lacked jurisdiction to do so due to the Taxpayer’s untimely filing. Based upon the facts presented, the County Board should have dismissed the protest as untimely filed.

Absent any evidence of untimely notice by a county which prevents a taxpayer from timely filing a protest or appeal, the power to review untimely-filed protests does not fall within the authority conferred upon the Commission 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 because the County Board of Equalization did not have subject matter jurisdiction. Therefore, the Commission determines that it does not have jurisdiction over 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.

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

¹⁰ See Neb. Rev. Stat. § 77-1507.01 (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 Cuming County Treasurer, and the officer charged with preparing the tax list for Cuming County as follows:

Ashley Marks
Cuming County Treasurer
PO Box 267
West Point, NE 68788

Cherie Kreikemeier
Cuming County Assessor
200 S Lincoln, Rm 101
West Point, NE 68788

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

SIGNED AND SEALED: October 31, 2023



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner