

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

Daniel L. Javins,  
Appellant,

Case No. 23R 0566

v.

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

Buffalo County Board of  
Equalization,  
Appellee.

**THE COMMISSION FINDS AS FOLLOWS:**

**I. PROCEDURAL HISTORY**

The Commission held a jurisdictional show cause hearing on October 18, 2023 at 2:00 PM. No one appeared on behalf of the Taxpayer. Andrew W. Hoffmeister, Chief Deputy Buffalo County Attorney, appeared telephonically on behalf of the Buffalo 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

The Taxpayer did not appear telephonically as required by the Commission's September 19, 2023, Notice of Appeal and Order to Show Cause and Notice of Hearing. The County Board moved for dismissal based upon untimely filing of the Taxpayer's appeal materials as well as the Taxpayer's failure to appear as required.

### IV. ANALYSIS

An appeal or petition to the Commission is timely filed 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 or petition.<sup>6</sup>

On August 28, 2023, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. § 77-1502. The County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year was August 24, 2023. The

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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).

<sup>6</sup> Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

envelope containing the appeal was postmarked August 25, 2023, and received by the Commission on August 28, 2023.

Nebraska Revised Statutes § 49-1201 provides tax protests and appeals to be deemed filed on the date the materials were mailed if a party demonstrates by competent evidence the materials were (1) transmitted through the U.S. Mail; (2) mailed but not received by the state or political subdivision; or (3) received with an illegible or erroneous postmark.<sup>7</sup> No competent evidence was adduced at the hearing demonstrating any of the above factors would apply. Therefore, the Commission determines that the appeal was not timely filed.

Additionally, the Commission’s September 19, 2023, Order specifies “[a]n order dismissing the appeal will be issued if Appellant fails to appear at the hearing within fifteen minutes of the time and date listed above.” As stated above, the Taxpayer did not appear within fifteen minutes of the date and time for hearing.

## V. CONCLUSION

Based upon the foregoing reasons, the Commission finds it 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 Buffalo County Treasurer, and the officer charged with preparing the tax list for Buffalo County as follows:

Brenda R. Rohrich  
Buffalo County Treasurer  
PO Box 1270  
Kearney, NE 68848

Roy Meusch  
Buffalo County Assessor  
PO Box 1270  
Kearney, NE 68848

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<sup>7</sup> Neb. Rev. Stat. § 49-1201 (Reissue 2021).

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

**SIGNED AND SEALED:** October 30, 2023



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner