

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

Kevin J. Sillau,
Appellant,

v.

Douglas County Board of
Equalization,
Appellee.

Case No. 23R 0990

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on October 10, 2023 at 9:00 AM. Kevin J. Sillau (the Taxpayer) appeared telephonically. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas 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 September 7, 2023, the Commission received an envelope containing an appeal of the determination of the Douglas County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502. The envelope did not contain a copy of the decision, order, determination, or action appeal from, or other information that documents the decision, order, determination, or action appealed from (BOE Decision).

The Taxpayer testified they were out of the country on an extended trip from May 30, 2023, to July 20, 2023. The Taxpayer acknowledged that the County sent notice of the 2023 taxable value in June, but the Taxpayer did not see that notice until returning July 20, 2023. The Taxpayer stated he contacted Douglas County about filing an appeal and was told the protest filing deadline had passed.

IV. ANALYSIS

The deadline for filing the appeal 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 section 77-1502.⁶ The Douglas County Board did adopt a resolution extending

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 Neb. Rev. Stat. § 77-1510 (Reissue 2018).

the deadline for hearing protests (Case File), so the filing deadline for tax year 2023 was September 11, 2023. The appeal 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.⁷ The envelope did not contain a copy of the BOE Decision. Therefore, the Commission determines that the appeal was not timely filed.

“Jurisdiction is the inherent power or authority to decide a case.”⁸ 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.⁹ The Taxpayer did not timely file a protest with the Douglas County Board of Equalization as required by Neb. Rev. Stat. § 77-1502, and no evidence was presented that untimely notification from the County Board regarding valuation prevented the Taxpayer from timely filing a protest or appeal.¹⁰

While the Taxpayer asserted they were not aware that valuation notifications must be protested during the month of June, the Commission has no equitable authority to extend or waive any filing deadlines or exercise authority greater than that 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. Therefore, the Commission determines that it does not have jurisdiction over the appeal or petition.

⁷ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

⁸ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

⁹ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

¹⁰ Neb. Rev. Stat. § 77-1507.01 (Reissue 2018).

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

John Ewing
Douglas County Treasurer
1819 Farnam St, Rm H02
Omaha, NE 68183

Walt Peffer
Douglas County Assessor
1819 Farnam St, 4th Floor
Omaha, NE 68183

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

SIGNED AND SEALED: October 13, 2023.



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner