

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

Matt Kinning,
Appellant,

Case No. 23R 1060

v.

Lancaster County Board of
Equalization,
Appellee.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on November 15, 2023 at 10:00 AM. Matt Kinning (the Taxpayer) appeared telephonically. Daniel J. Zieg, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster 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

Matt Kinning testified that due to some unusual personal circumstances, a copy of the Lancaster County Board of Equalization's decision was mistakenly omitted from the appeal materials postmarked September 7, 2023 and received by the Commission on September 11, 2023. Kinning stated he was working outside of Lancaster County and was not involved in sending the second envelope containing the County Board's decision, which was postmarked September 12, 2023, and received by the Commission on September 14, 2023.

IV. ANALYSIS

Any tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or any payment required or authorized to be filed or made to the State of Nebraska, or to any political subdivision thereof, which is: (1) Transmitted through the United States mail; (2) mailed but not received by the state or political subdivision; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence

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).

that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was deposited in the United States mail on or before the date for filing or paying.⁶

On September 11, 2023, the Commission received an envelope containing an appeal of the determination of the Lancaster 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.

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 77-1502.⁷ The Lancaster County Board did adopt a resolution extending the deadline for hearing protests. As September 10, 2023 fell on a Sunday, the filing deadline was extended to September 11, 2023.⁸

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.⁹ The envelope did not contain a copy of the County Board's decision. The envelope containing the decision was postmarked September 12, 2023, and received by the Commission on September 14, 2023. 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.

⁶ Neb. Rev. Stat. § 49-1201 (Reissue 2021).

⁷ Neb. Rev. Stat. § 77-1510 (Reissue 2018).

⁸ Neb. Rev. Stat. § 49-1203 (Reissue 2021).

⁹ Neb. Rev. Stat. § 77-5013(2) (Reissue 2018).

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

Rachel Garver
Lancaster County Treasurer
555 S 10th St, Rm 102
Lincoln, NE 68508

Dan Nolte
Lancaster County Assessor
555 S 10th St, Rm 102
Lincoln, NE 68508

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

SIGNED AND SEALED: November 28, 2023



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner