

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

Kyle F. Swikoski,
Appellant,

v.

Douglas County Board of
Equalization,
Appellee.

Case No. 23R 1694

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on January 23, 2024, at 10:00 AM. Kyle F. Swikoski (the Taxpayer) appeared telephonically. Landon L. Friesen, 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

Kyle Swikoski testified he acquired ownership of the Subject Property on August 24, 2023. He asserts the previous owner of the Subject Property provided him with all tax-related documentation. However, Swikoski asserts no notice of valuation change was provided to him or the previous owner. Swikoski admits he had no knowledge as to whether the assessment of the Subject Property had increased from tax year 2022 to tax year 2023.

IV. ANALYSIS

Per Neb. Rev. Stat. § 77-1315(2):

On or before June 1, ..., the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year. Such notice shall be given by first-class mail addressed to such owner's last-known address. It shall identify the item of real property and state the old and new valuation ...

Swikoski admits he did not become the owner of record and take possession of the Subject Property until August 24, 2023, well after the statutory deadline for the county assessor to send notice of changes of

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).

value. There is no evidence or indication in the record of this proceeding that the owner of record as of June 1, 2023, received any such notice, or whether any such notice was sent. Further, there is no indication in the record whether the Subject Property was assessed at a value different than in the previous year.

Nebraska Revised Statutes § 77-1502(1) states, “[p]rotests regarding real property shall be signed and filed after the county assessor’s completion of the real property assessment roll required by section 77-1315 and on or before June 30.”⁶ There is no evidence and no indication in the record of this proceeding that either the owner of record or Swikoski filed a protest.

Neb. Rev. Stat. § 77-1507.01 provides:

Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual or special valuation of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 771501 to 77-1510.

Even though he did not become the owner of record of the Subject Property until August 24, 2023, and even though there is no evidence that there was a change of value from the prior tax year, Swikoski asserts he has the statutory right to file a petition with the Commission based on the county assessor’s failure to give notice that prevented the timely filing of his protest. We disagree.

Swikoski admits he did not take possession of the Subject Property until August 24, 2023, well after the statutory deadline for notice of a change in value and for filing a protest with the County Board. There is no evidence that any notice of change in value was required. And

⁶ Further, the county assessor, once each year’s assessment roll is complete, “shall cause to be published in a newspaper of general circulation in the county a certification that the assessment roll is complete and notices of valuation changes have been mailed and provide the final filing date for filing valuation protests with the county board of equalization.” Neb. Rev. Stat. § 77-1315(3) (Reissue 2018).

even if such notice was given, there is no requirement that the notice be given to anyone other than the owner of record as of June 1, 2023.

Because Swikoski was not the owner of record of the Subject Property who was entitled to notice as of by June 1, 2023, and as there is no evidence any notice was required to be issued per Neb. Rev. Stat. § 77-1315, the Commission determines there was no failure to provide notice to Swikoski which prevented his timely filing of a protest in accordance with Neb. Rev. Stat. § 77-1510 or which would authorize the filing of a petition under Neb. Rev. Stat. § 77-1507.01.

“Jurisdiction is the inherent power or authority to decide a case.”⁷ 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.⁸

Swikoski has not provided any evidence or authority to demonstrate any basis upon which the Commission would have jurisdiction over this matter. Therefore, the Commission determines it does not have jurisdiction over the petition.

V. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned petition.

THEREFORE IT IS ORDERED:

1. The above captioned petition 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:

⁷ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

⁸ *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

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: January 30, 2024



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner