

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

Joann L. Johnson,
Appellant,

Case No. 24H 1446

v.

**ORDER FOR DISMISSAL
WITH PREJUDICE**

Lancaster County Board of
Equalization,
Appellee.

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a single commissioner hearing on the merits of this appeal on December 9, 2024, at 2:00PM CST, before Commissioner Jackie S. Russell. Joann L Johnson (the Taxpayer) appeared. Jennifer D. Chrystal-Clark, Deputy Lancaster County Attorney, appeared on behalf of the Lancaster County Board of Equalization (the County Board). The Commission took notice of its case files, received testimony, and heard argument.

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

An appellate tribunal, such as the Commission, cannot acquire jurisdiction over an issue if the body from which the appeal is taken

¹ Neb. Rev. Stat. § 77-5013 (Reissue 2018).

had no jurisdiction of the subject matter.² 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.³ 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.⁴

III. FINDINGS OF FACT

Johnson testified she mailed her application for homestead exemption, Form 458, on April 25, 2023. She stated she received no notice as to whether her application was approved or denied. She first became aware of an issue in January 2024, and when her mortgage lender provided an escrow statement indicating that more money was needed to cover the property taxes due for tax year 2023.

Following this discovery, Johnson attempted to raise the issue of her 2023 homestead exemption to the Lancaster County Board of Equalization. On August 27, 2024, the County Board passed a motion “to deny the appeal on the rejection of a homestead exemption application.”

IV. ANALYSIS

Before reaching the legal issues presented for review, and even if no party has raised the issue, the Commission has the duty to determine whether it has jurisdiction over the matter before it.⁵

Neb. Rev. Stat. § 77-3512 outlines and controls the procedure for filing a homestead exemption application. Subsection (1) requires a homeowner seeking an exemption to file the application with the county assessor “after February 1 and on or before June 30 of each

² See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

³ *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁵ *Hilt v. Douglas Cty. Bd. of Equal.*, 30 Neb. App. 425, 429 (2021).

year...” Subsection (1)(a) provides a county board the opportunity to extend the June 30 filing deadline to July 20. Subsection (2) states a “[f]ailure to file an application as required in subsection (1) of this section shall constitute a waiver of the exemption for the year in which the failure occurred.”

Johnson’s un rebutted testimony indicates she mailed her homestead exemption application on April 25, 2023. Neb. Rev. Stat. § 77-3512(1) states “[i]t shall be the duty of each owner who wants a homestead exemption... to file an application therefor with the county assessor... after February 1 and on or before June 30 of each year...” While Johnson deposited her homestead exemption application in the US Mail, she ultimately bears the responsibility of ensuring her application is properly filed.

The Commission has only that authority specifically conferred upon it by the Constitution of the State of Nebraska, by Nebraska State Statutes, or by construction necessary to achieve the purpose of the relevant provisions or act.⁶ The Commission does not generally have equitable powers. Therefore, when presented with claims that sound in equity, the Commission does not have the power to render equitable decisions without express constitutional or statutory authority.⁷

As noted above, the application was ultimately not filed with the county assessor prior to the June 30, 2023, deadline. There is no indication in the record that the county board extended Johnson’s filing deadline to July 20. There is no indication in the record that Johnson filed a late application due to a medical condition or death of a spouse pursuant to Neb. Rev. Stat. § 77-3514.01.

Accordingly, the Commission finds the Lancaster County Board of Equalization did not have the legal authority to take the action it took

⁶ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

⁷ From the time of its inception in 1995 until 2001, the Commission was authorized by statute to hear appeals “as in equity.” See e.g., 1995 Neb. Laws LB 490, § 153; 2001 Neb. Laws LB 465 §7; 2004 Neb. Laws LB 973 §51. This was the same language that had previously applied to valuation appeals heard by the district courts prior to the creation of the Commission. In 2007, the Legislature repealed the section of statute which had authorized the Commission to hear appeals “as in equity.” See, 2007 Neb. Laws LB 167, § 6.

on August 27, 2024, because Johnson’s homestead exemption application was not timely filed. As such, the County Board should have dismissed for lack of jurisdiction what it characterized as an “appeal”.

“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

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.¹⁰ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”¹¹ Therefore, the Commission should not exercise jurisdiction over the appeal.

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

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

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 *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

¹¹ *Carlos H. v. Lindsay M.*, 283 Neb. 1004 (2012).

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: December 16, 2024



Robert W. Hotz, Chairman