

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

Candace Hanes,
Appellant,

Case No. 24R 1455

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 October 31, 2024 at 2:00PM. Candace Hanes (the Taxpayer) appeared telephonically. Jennifer D. Chrystal-Clark, 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 The County Board adopted such a resolution, so the appeal filing deadline was September 10, 2024. 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

The Commission received an envelope containing this appeal on September 12, 2024. The appeal form was signed August 18, 2024. The deadline for appealing decisions of the Lancaster County Board was September 10, 2024, since the County Board adopted a resolution to extend the deadline for hearing protests. The envelope was not postmarked, but an undated “postage due” stamp was present.

Hanes testified she initially mailed the appeal on or about August 23, 2024. Hanes left out-of-state on or about August 30. When she returned from her trip, Hanes found the appeal envelope had been returned for insufficient postage. Hanes testified she added postage and re-sent the appeal envelope via US Mail on September 9, 2024.

IV. ANALYSIS

Nebraska law recognizes a general presumption of mailing under circumstances described in Neb. Rev. Stat. § 49-1201.⁵

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

² Neb. Rev. Stat. § 77-1510 (Reissue 2018).

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 See, *Midwest Renewable Energy, LLC v. Lincoln County Bd. of Equalization*, 284 Neb. 34, 815 N.W.2d 922 (2012).

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 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

Applying the requirements of Section 49-1201 to the present case, the appeal and required payment are deemed to be filed on the date the envelope was mailed if Hanes has established by competent evidence the envelope was deposited in the United States mail on or before September 10, 2024. We find that Hanes has met that burden. She testified under oath that she mailed the envelope on August 23, 2024, and that testimony was not rebutted by anything in the record.

However, in order for the Commission to exercise jurisdiction over this appeal, the mailing of Hanes' appeal must also comply with the requirements of Neb. Rev. Stat. § 77-5013, which states, in part:

(1) The commission obtains exclusive jurisdiction over an appeal or petition when: (a) The commission has the power or authority to hear the appeal or petition; (b) An appeal or petition is timely filed; (c) The filing fee, if applicable, is timely received and thereafter paid; and (d) In the case of an appeal, 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.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, 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 or petition.⁷

⁶ Neb. Rev. Stat. § 49-1201 (Reissue 2021). The provisions of this section are commonly referred to as "the mailbox rule."

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

In order to be timely filed under Section 77-5013, a petition or appeal must be “received” by the Commission on or before the filing date (this could be accomplished by hand-delivery), or, if “placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission” on or before the filing date. Section 77-5013 requires the envelope be “placed in the United States mail, postage prepaid, with a legible postmark.”

As noted above, competent evidence has been adduced the envelope was deposited in the United States mail, but we must also address the mailing requirements of Section 77-5013(2) of “postage prepaid” and “with a legible postmark.” First, we found above that there was a “postage due” stamp on the envelope that validates Hanes’ sworn testimony the envelope was mailed with the United States Postal Service. Second, Hanes testified she affixed a postage stamp on the envelope before she mailed it and deposited the envelope in a mailbox on August 23, 2024. Hanes has therefore satisfied the requirements of placing the envelope in the United States mail with a legible postmark.

What is lacking, however, is that the envelope included “postage prepaid.” The term “postage prepaid” is found numerous times in Nebraska statutes, but we find no statutory definition for the term. We also find no definition for the term in Black’s Law Dictionary or Webster’s Dictionary.

However, in a case involving the construction of Section 77-5013(2), the Nebraska Supreme Court commented on the meaning of “postage prepaid” and arguably equated the term with “sufficient postage” when finding that “[section] 77-5013(2) focuses only on whether the appeal was properly *placed in the mail with sufficient postage* and a legible postmark for delivery to TERC before the filing deadline.”⁸

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

⁸ *Lozier Corp. v. Douglas County Bd. of Equalization*, 285 Neb. 705, 709, 829 N.W.2d 652, 656 (2013) (emphasis in original) (emphasis added).

relevant provisions or act.⁹ The Commission does not generally have equitable powers.¹⁰ 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. Sections 49-1201 and 77-5013 provide the Commission with the statutory authority to make a jurisdictional determination as to whether the Commission is authorized to hear the appeal.¹¹

Without a statutory definition for the term “postage prepaid,” we rely upon the Court’s explanation of the requirements of Section 77-5013(2), equating “postage prepaid” with “sufficient postage.”¹² Since the August 23, 2024, mailing was timely and legibly marked but lacked sufficient postage, and thus failed to satisfy the requirement of “postage prepaid,” we find the filing failed to meet the statutory requirements to authorize the Commission to exercise jurisdiction over the appeal.

Based upon the record, the Commission finds it does not have jurisdiction to hear the merits of this appeal.

V. CONCLUSION

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

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 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.

¹¹ 77-5013(1) includes the jurisdictional requirements, as distinguished from mandatory requirements. See, *Creighton St. Joseph Reg’l Hosp. v. Nebraska Tax Equalization & Review Comm’n*, 260 Neb. 905, 620 N.W.2d 90 (2000). Section 77-5013(2) effectively functions as a definition of the “timely filed” requirement of Section 77-5013(1). In other words, Section 77-5013(2) does not add to the jurisdictional requirements of Section 77-5013(1) but merely defines or clarifies them.

¹² *Lozier Corp.*, 285 Neb. at 709, 829 N.W.2d at 656.

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 25, 2024



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner