

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

Dan Carlson,
Appellant,

v.

Dodge County Board of
Equalization,
Appellee.

Case No. 24R 1518

**ORDER FOR DISMISSAL
WITH PREJUDICE**

THE COMMISSION FINDS AS FOLLOWS:

I. PROCEDURAL HISTORY

The Commission held a jurisdictional show cause hearing on December 2, 2024 at 2:00PM. Dan Carlson (the Taxpayer) appeared telephonically. Cooper Self, Deputy Dodge County Attorney, appeared telephonically on behalf of the Dodge 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

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

August 24, or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.² 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.³

III. FINDINGS OF FACT

On October 29, 2024, the Commission received an appeal and filing fees from the Taxpayer. The appeal form was signed on October 21, 2024. The County Board decision included with the appeal was dated July 17, 2024, and mailed to the Taxpayer on July 22, 2024.

A letter from the Taxpayer included with the appeal stated the Taxpayer was out of the country from June 29, 2024, until October 2, 2024. The letter notes the County Board decision was mailed to him, but due to his absence, he did not see the decision until after returning from abroad.

Carlson testified he acquired the Subject Property on May 22, 2024. He stated he received notice of change of valuation prior to June 1, 2024. He then timely filed a protest and was present at a hearing of the Dodge County Board of Equalization. Carlson stated he is not aware of when the County Board's decision was actually received as he was out of the country. Carlson stated a neighbor picked up his mail during this timeframe, but no one was opening his mail on his behalf.

IV. ANALYSIS

On October 29, 2024, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. § 77-1502. The filing deadline for appeals from Dodge County was August 26, 2024.⁴ The envelope containing

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

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Because the August 24, 2024, deadline set by Neb. Rev. Stat. § 77-1510 fell on a Saturday, Neb. Rev. Stat. § 49-1203 provides the deadline shall be the next business day, August 26, 2024.

the appeal was postmarked October 22, 2024, and received by the Commission on October 29, 2024.

While Carlson argues he did not receive notice of the County Board's decision on his protest until after he returned from abroad, in order for notice to be effective the County Board is only required to mail written notice of its decision to the Taxpayer.⁵ Carlson does not dispute that the notice was mailed to him timely. As such, the Commission finds the County Board properly provided notice of its decision.

The Commission understands Carlson's argument that he did not receive notice as he was out of the county due to exigent circumstances. However, the Commission does not have the authority to equitably toll the filing deadline set in statute. 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 The Commission has no such constitutional or statutory authority in this case and therefore determines the appeal was not timely filed.

V. CONCLUSION

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

⁵ Neb. Rev. Stat. § 77-1502(6) (Supp. 2021).

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.

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

Gail Bargstadt
Dodge County Treasurer
PO Box 999
Fremont, NE 68026

Debbie Churchill
Dodge County Assessor
435 N Park Ave, Room 202
Fremont, NE 68025

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

SIGNED AND SEALED: December 9, 2024



Robert W. Hotz, Commissioner

Jackie S. Russell, Commissioner