

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

Omrotse Trust,  
Appellant,

Case No. 24SV 1517

v.

Douglas 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 18, 2024 at 1:00PM. Eric Stormo appeared telephonically on behalf of Omrotse Trust (the Taxpayer). 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.<sup>1</sup> 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

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<sup>1</sup> Neb. Rev. Stat. § 77-5013 (Reissue 2018).

Neb. Rev. Stat. § 77-1502.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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 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.<sup>6</sup>

### III. FINDINGS OF FACT

On October 18, 2024, the Commission received an appeal from Eric Stormo regarding the denial of special valuation for property in Douglas County. The appeal form was signed on October 14, 2024, and postmarked October 15, 2024. The County Board decision included with the appeal was dated on September 11, 2024, and postmarked to the Taxpayer on September 12, 2024.

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<sup>2</sup> Neb. Rev. Stat. § 77-1510 (Reissue 2018).

<sup>3</sup> See, e.g., *Lane v. Burt Cty. Rural Pub. Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>4</sup> *Carlos H. v. Lindsay M.* 283 Neb. 1004, 815 N.W.2d 168 (2012).

<sup>5</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>6</sup> Neb. Rev. Stat. § 49-1201 (Reissue 2021).

Stormo is the trustee and a beneficiary of the Omrotse Trust. Stormo signed and mailed the appeal. Stormo testified he received notice of the County Board’s decision with a postmark of September 12, 2024. Stormo stated he interpreted Neb. Rev. Stat. § 77-1345.01 to mean that the thirty-day requirement for filing an appeal with the Commission would run based upon the date the County actually transmitted its decision – September 12, 2024. Alternatively, Stormo argued the federal holiday occurring on October 14, 2024, should extend the deadline for filing. Stormo also intimated a three-day grace period for mailing may be allowed in statute.

#### IV. ANALYSIS

On October 18, 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 envelope containing the appeal was postmarked October 15, 2024, and received by the Commission on October 18, 2024.

Neb. Rev. Stat. § 77-1345.01 provides for the process of protesting an adverse decision of a county assessor regarding special valuation of property to the County Board of Equalization. The deadline for filing a protest to the County Board is “[w]ithin thirty days after the mailing of the notice...”<sup>7</sup> The statute also provides that a decision of the County Board “may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision.”<sup>8</sup>

“The fundamental objective of statutory interpretation is to ascertain and carry out the Legislature’s intent.”<sup>9</sup> “The Legislature is also presumed to know the general condition surrounding the subject matter of the legislative enactment, and it is presumed to know and

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<sup>7</sup> Neb. Rev. Stat. § 77-1345.01(2) (Reissue 2018).

<sup>8</sup> Neb. Rev. Stat. § 77-1345.01(9) (Reissue 2018). [*emphasis added*]

<sup>9</sup> *In re William R. Zutavern Revocable Trust*, 309 Neb. 542, 558, 961 N.W.2d 807, 821 (2021).

contemplate the legal effect that accompanies the language it employs to make effective the legislation.”<sup>10</sup>

Here, Stormo suggests the Commission interpret the “thirty days after the date of the decision” deadline provided in Neb. Rev. Stat. § 77-1345.01(9) to be read the same as the “thirty days after the mailing of the notice” deadline in subsection (2) of that statute. The Commission declines to do so. As noted above, the Legislature is presumed to know and understand the legal effect of the language used in creating legislation. In this statute, the Legislature employs two differing deadlines – one based upon the mailing of a decision, and the other based upon the date of a decision. Based upon the different language used in the two subsections, the Commission must presume the Legislature intended to employ two different deadlines.

Stormo’s arguments regarding a three-day grace period for mailing, or that the October 14, 2024, federal holiday extended the filing deadline are also without merit. Neb. Rev. Stat. § 25-2221 sets forth how time is to be computed for civil procedure. It reads:

Except as may be otherwise more specifically provided, the period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.<sup>11</sup>

Here, the decision of the Douglas County Board of Equalization was dated September 11, 2024. Excluding the day of the act (in this case, date of the County Board decision), the thirty-day deadline would have run on Friday, October 11, 2024. As the deadline occurred prior to the

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<sup>10</sup> *J.S. v. Nebraska Dept. of Health & Human Servs.*, 306 Neb. 20, 35, 944 N.W.2d 266, 277 (2020).

<sup>11</sup> Neb. Rev. Stat. § 25-2221 (Cum. Supp. 2022).

October 14, 2024, federal holiday, it would not have any effect upon the filing deadline.

Lastly, the Commission is not aware of, nor has Stormo provided, any authority in Nebraska law regarding any three-day grace period for mailing. The Nebraska Supreme Court addressed a similar issue in *Lienemann v. Hillyer (In re Estate of Lienemann)*,<sup>12</sup> in which the Court noted the Court of Appeals approved the addition of three days due to service by mail, when a deadline was based upon thirty days after *service*. The Court then found it “unwarranted and not sensible to add 3 days due to mailing to a statute which explicitly states an action is barred ‘sixty days after the mailing.’”<sup>13</sup> In this case, Neb. Rev. Stat. § 77-1345.01(9) does not provide for a deadline ‘thirty days after service of the decision.’ Rather, the deadline is based upon the date of the decision. The Commission finds the deadline for filing the Taxpayer’s appeal was Friday, October 11, 2024. Therefore, the Commission determines that the appeal was not timely filed.

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

John Ewing  
Douglas County Treasurer  
1819 Farnam St, Rm H02

Omaha, NE 68183

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<sup>12</sup> 277 Neb. 286, 761 N.W.2d 560 (2009).

<sup>13</sup> *Id.* at 291, N.W.2d at 564.

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:** November 25, 2024



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner