

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

Willis A. Wachter,  
Appellant,

v.

Pierce County Board of Equalization,  
Appellee.

Case No: 14A 037

**ORDER FOR DISMISSAL WITH  
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

**I. PROCEDURAL HISTORY**

A jurisdictional show cause hearing was held on January 21, 2015. Willis A. Wachter appeared telephonically at the hearing before the Commission (herein referred to as the “Taxpayer”). Verlyn Luebbe, Pierce County Attorney, appeared telephonically on behalf of the Pierce County Board of Equalization (herein referred to as the “County Board”). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

**II. STANDARD OF REVIEW**

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it 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 person having a right to appeal may petition the Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in §§77-1501 to 77-1510.<sup>2</sup> Regarding the timely filing of a protest of a tax valuation, Neb. Rev. Stat. §49-1201, states as follows:

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

<sup>2</sup> See, Neb. Rev. Stat. 77-1507.01 (Reissue 2009).

Any report, claim, tax return, 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>3</sup>

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.<sup>4</sup> “[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.”<sup>5</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>6</sup>

### III. ANALYSIS

On August 19, 2014, the Commission received an envelope containing an appeal of the assessed value of a parcel of real property in Pierce County (herein referred to as the “Subject Property”).<sup>7</sup> In place of the determination of the County Board the envelope contained a letter from the Pierce County Clerk rejecting the Taxpayer’s protest to the County Board because it was filed out of time.<sup>8</sup> The Taxpayer alleged that he was prevented from timely filing a protest of his assessed value with the County Board because of incorrect instructions on the Notice of Valuation change for tax year 2014.

At the hearing the Commission received a Notice of Valuation for the Subject Property from the Pierce County Assessor’s office dated May 30, 2014 (herein referred to as the “May

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<sup>3</sup> Neb. Rev. Stat. 49-1201 (Reissue 2009).

<sup>4</sup> See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>5</sup> *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, xxx N.W.2d xxx, xxx (2012).

<sup>6</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>7</sup> Case File

<sup>8</sup> Case File.

Notice”).<sup>9</sup> Additionally the Commission received a Notice of Valuation Change for the Subject Property from the County Board which indicated that it was mailed on June 9, 2014 (herein referred to as the “June Notice”).<sup>10</sup> The Taxpayer testified that he received both the May Notice and the June Notice.

Peggy Wragge the Pierce County Assessor (herein referred to as the “Assessor”) testified that for tax year 2014 there was an error in all of the notices of valuation change issued by the Assessor’s office. The May Notice regarding the Subject Property contained erroneous instructions for protesting the valuation of real property indicating that protests must be filed by “06/01/2014” rather than June 30, 2014, as set by statute.<sup>11</sup> The Assessor testified that because of the erroneous instructions in the May Notice mailed by the County Assessor, the County Board, acting to correct the assessment of the Subject Property, issued the June Notice regarding the Subject Property.<sup>12</sup> The June Notice indicates that it was mailed on June 9, 2014, and that a protest of the Subject Property’s assessed value shall be filed “within thirty (30) days after the mailing of this notice” which would have been July 9, 2014, for tax year 2014.<sup>13</sup>

The record before the Commission indicates that the Pierce County Clerk received the Taxpayer’s property tax protest on July 15, 2014, in an envelope without a cancellation mark.<sup>14</sup> No other evidence was offered regarding when the Taxpayer’s property tax protest to the County Board was deposited in the United States mail.

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.<sup>15</sup> “[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.”<sup>16</sup> Based on a review of the evidence, the Commission finds and determines that the Taxpayer’s property valuation protest to the County Board of Equalization was filed on July 15, 2014, after the deadline to file protests pursuant to Neb. Rev. Stat. 77-1504. The record before the Commission

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<sup>9</sup> E3:3

<sup>10</sup> E3:4

<sup>11</sup> E3:3, Neb. Rev. Stat. 77-1315 (2012 Cum. Supp.), Neb. Rev. Stat. 77-1502(1) (2012 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. 77-1504 (2012 Cum. Supp.)

<sup>13</sup> E3:4, Neb. Rev. Stat. §77-1504 (2012 Cum. Supp.)

<sup>14</sup> E3:5.

<sup>15</sup> *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

<sup>16</sup> *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, xxx N.W.2d xxx, xxx (2012).

does not establish that a protest to the County Board was timely filed with the County Board or deposited in the United States mail for transmission to the County Board prior to July 9, 2014.

“Jurisdiction is the inherent power or authority to decide a case.”<sup>17</sup> 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.<sup>18</sup> The Taxpayer’s assertion that the Commission has authority to address the valuation of the Subject Property because of a failure of notice is not supported by the record before the Commission. The May Notice contained all of the information required by statute except for the dates for filing a protest for tax year 2014.<sup>19</sup> The County Board issued the June Notice to the Taxpayer and other County Taxpayers to rectify the erroneous instructions in the May Notice that may have prevented the timely filing of a protest or appeal provided for in §§77-1501 to 77-1510. The June Notice indicated “Corrective 2014 valuation notice, please disregard prior notice to do incorrect date” and gave the correct new dates for filing a protest with the County Board. Therefore, the Commission determines that it does not have jurisdiction over the appeal or petition.

#### **IV. CONCLUSION**

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

#### **ORDER**

##### **IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeal is dismissed with prejudice.
2. This decision, if no appeal is filed, shall be certified within thirty days to the Pierce County Treasurer, and the officer charged with preparing the tax list for Pierce County as follows:

Peggy Wragge  
111 W Court Rm 5  
Pierce, NE 68767

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<sup>17</sup> *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

<sup>18</sup> *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

<sup>19</sup> *See, Neb. Rev. Stat. 77-1315 (Reissue 2012).*

Christine Bahr  
111 W Court Rm 4  
Pierce, NE 68767

as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

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

**SIGNED AND SEALED:** February 13, 2015.

**Seal**

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Thomas D. Freimuth, Commissioner

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Nancy J. Salmon, Commissioner