

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

DON R. HOPPES,)	
)	
Appellant,)	CASE NO. 03A-41
)	03R-111
vs.)	
)	
LANCASTER COUNTY BOARD OF)	
EQUALIZATION,)	FINDINGS AND ORDER
)	
Appellee.)	

Filed 5 January 2004

Appearances:

For the Appellant: Don R. Hoppes
RR 1 Box 94
1805 Bennet Rd
Roca, NE 68430

For the Appellee: Michael E. Thew, Esq.
Chief Deputy, Civil Division.
Lancaster County Attorneys Office
575 South 10th Street
Lincoln, NE 68508

Before: Commissioners Hans, Lore, Wickersham and Reynolds.

Reynolds, Chair, for the Commission:

**I.
STATEMENT OF THE CASE**

Don R. Hoppes, owns two parcels of land legally described as May's Sub Lot 24, Lancaster County, Nebraska, (Case No. 03A-41) and Lot 15 NE of Section 12, Township 8, Range 6, Lancaster County, Nebraska (Case No. 03R-111). (Notice of Valuation Change Statements).

The Lancaster County Assessor proposed valuing the subject properties in the amount of \$64,300 in Case No. 03A-41 and

\$140,432 (\$92,246 agricultural value) in Case No. 03R-111. (Notice of Valuation Change Statements). The Taxpayer timely filed a protest of that determination and requested that the proposed value be reduced. The Taxpayer's protest forms are not part of the record. The Lancaster County Board of Equalization ("the Board") granted the protests in part. (County Board's Final Determinations).

The Taxpayer filed an appeal of the Board's decisions by mailing his appeal forms and the required filing fee for the two parcels to the Commission. The Taxpayer did not provide copies of the final decisions appealed from, and did not provide other documentation of those decisions. The documents mailed by the Taxpayer were received by the Commission on August 21st, 2003. The Commission notified Mr. Don Hoppes of the jurisdictional requirement in writing on August 21, 2003. The Commission Staff personally returned Mr. Hoppes filing fees and appeal forms on August 20, 2003. Mr. Hoppes returned those documents and provided a copy of the Board's final determinations by hand delivering those documents to the Commission on August 28, 2003.

The Commission issued an Order to Show Cause raising the jurisdictional issue on December 3, 2003. The Order and Notice of Hearing was served by certified mail to each of the Parties and set the hearing date for December 15, 2003. The Commission called the matter for hearing on December 18, 2003. An Affidavit

of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties. The Commission issued an Amended Order and Notice of Hearing at the Taxpayer's request setting the hearing date for December 18, 2003.

Mr. Don R. Hoppes participated in the hearing by telephone conference call from Roca, Nebraska. The Lancaster County Board of Equalization appeared through Michael E. Thew, Esq., the Chief Deputy, Civil Division, Lancaster County Attorneys Office. The County made a motion to file and answer out of time in the above captioned appeals.

II. ISSUES

The issues before the Commission are (1) whether the Taxpayer properly perfected his appeals, and (2) whether the County should be allowed to file an answer out of time in one of these appeals.

III. APPLICABLE LAW

Nebraska State Law provides:

"(1) Any person appealing from a final decision under section 77-1510 or 77-5007 shall timely file the appeal with the commission. For purposes of this section, an

appeal shall be deemed to be timely filed if the appeal is postmarked or received within thirty days after the date the final decision was rendered. (2) An appeal shall be perfected and the commission shall obtain jurisdiction when: (a) The appeal is filed on a form provided by the commission; (b) A filing fee of twenty-five dollars is paid, except that no filing fee shall be required for a county assessor filing in his or her official capacity; and (c) A copy of the final decision or other information that documents such final decision is filed. (3) Except as provided in this section, no other requirement shall be deemed jurisdictional."

Neb. Rev. Stat. §77-5013 (2003 Supp.).

The deadline for county board of equalization action on Section §77-1502 protests is July 25 of each year unless that deadline is otherwise extended by law. Neb. Rev. Stat. §77-1502 (2003 Supp.). Appeals of those decisions must be filed within thirty days of that date. Neb. Rev. Stat. §77-5013(2003 Supp.). Appeals filed pursuant to Section 77-1502 must therefore be perfected on or before August 24 of each year, unless the deadline falls on a weekend. If the deadline falls on a weekend, the deadline is extended to next business day. Neb. Rev. Stat. §49-1202 (Cum. Supp. 2002) .

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The deadline for filing appeals in person or by mail was Monday, August 25, 2003.
2. The missing documents were personally filed with the Commission after the filing deadline.

**V.
ANALYSIS**

Jurisdiction is the inherent power or authority to decide a case. *Wickersham v. State*, 218 Neb. 175, 183; 354 N.W.2d 134, 140 (1984). 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. See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 554 N.W.2d 778 (1996).

There is no presumption that the Commission has jurisdiction. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 504 - 505, 583 N. W. 2D 353, 356 - 357 (1998). (Citations omitted). The Nebraska Supreme Court has ruled that a taxpayer must strictly comply with the time requirements of statute in order to confer subject matter jurisdiction on the Commission. *Creighton St. Joseph Regional*

Hospital v. Tax Equalization and Review Commission, 260 Neb. 905, 916, 620 N.W.2d 90, 99 (2000).

The Commission has no authority to extend the filing deadline set forth in law for any reason. *Id.* The Taxpayer's appeals were not timely perfected as required by law. The Commission therefore lacks subject matter jurisdiction, and the appeals must be dismissed as a matter of law.

**VI.
CONCLUSIONS OF LAW**

1. The Commission lacks jurisdiction over the Parties and further lacks jurisdiction over the subject matter of these appeals.
2. The Commission, in the absence of jurisdiction, must dismiss a pending appeal as a matter of law. *See, e.g., Jacobson v. Jacobson*, 10 Neb.App. 622, 624, 635 N.W.2d 272, 275 (2001).
3. Where a jurisdictional defect cannot be cured, an order dismissing the action should be entered with prejudice.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. These appeals are hereby dismissed with prejudice.
2. The Lancaster County Board of Equalization's decision in Case No. 03A-41 is therefore final, and the Taxpayer's real

property legally described as May's Sub Lot 24, Lancaster County, Nebraska, Lancaster County, Nebraska, shall be valued as follows for tax year 2003, as determined by the Board:

Total \$53,000

3. The Lancaster County Board of Equalization's decision in Case No. 03R-111 is also final, and the Taxpayer's real property legally described as Lot 15 NE of Section 12, Township 8, Range 6, Lancaster County, Nebraska, shall be valued as follows for tax year 2003, as determined by the Board:

Actual value \$140,320

Agricultural value \$ 92,246

4. That the Motion of the County to file an answer out of time is denied as moot.
5. Any request for relief by any Party not specifically granted by this Order is denied.
6. This decision, if no appeal is filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
7. This decision shall only be applicable to tax year 2003.

8. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 5th day of January, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

Seal

Wm. R. Wickersham, Chair