

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

LOUIS J. HALAMEK and DOROTHY)	
A. HALAMEK,)	
)	CASE NO. 03R-98
Appellants,)	
)	
vs.)	FINDINGS AND
)	FINAL ORDER
DOUGLAS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Louis J. Halamek
Dorothy A. Halamek
2619 South 48th Avenue
Omaha, NE 68106

For the Appellee: Erik C. Booth, Esq.
Deputy Douglas County Attorney
909 Civic Center
Omaha, NE 68183

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Louis J. Halamek and Dorothy A. Halamek ("the Taxpayer") owns a single-family residence in the City of Omaha, Douglas County, Nebraska. (E10:1). The Douglas County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$87,800 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the equalized value of the property was \$71,800. (E14:1). The Taxpayer, however, failed to

list the reasons for the appeal as required by Neb. Rev. Stat. §77-1502(Reissue 2003).

The Douglas County Board of Equalization ("the Board") considered and then denied the protest. (E1). The Taxpayer appealed the Board's decision on August 20, 2004. The Commission served a Notice in Lieu of Summons on the Board on September 8, 2003, which the Board answered on September 17, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on December 12, 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 called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on March 4, 2003. The Taxpayers appeared personally at the hearing. The Board appeared through Erik C. Booth, Deputy Douglas County Attorney. Commissioner Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

II. ISSUE

The only issue before the Commission is whether, based on the failure of the Taxpayers to list the reason(s) for the protest on the protest form as required by law, the Commission

has jurisdiction over either the Parties or the subject matter of this appeal.

**III.
APPLICABLE LAW**

State law requires that a statement of the reason or reasons for the requested change be attached to each protest. Failure to include the required statement results in automatic dismissal of the protest. Neb. Rev. Stat. §77-1502(Reissue 2003).

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayers failed to attach a statement of the reasons for the requested reduction in assessed value on the 2003 protest form. (E14:1).
2. The Board failed to automatically dismiss the protest.

**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 jurisdiction 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, 67, 554 N.W.2d 778, 782 (1996). A lack of jurisdiction may exist even where the parties submit an issue to an administrative agency in the mistaken belief that the agency has statutory authority to resolve it. The parties' understanding or intentions are irrelevant to the issue of whether the Commission had jurisdiction, since the parties cannot confer subject matter jurisdiction upon a tribunal by either consent or acquiescence. Finally, there is no 'presumption' that the Commission has jurisdiction in an appeal. *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 Commission was not provided with a copy of the Taxpayers' Protest Form until approximately thirty-days prior to the hearing on the merits of the appeal. That document, Exhibit 14, purports to be a copy of the original protest. The protest, which is signed by the Taxpayer, does not contain a statement of the reason or reasons for the protest. (E14:1). A statement of reasons for the protest is required by law. Neb. Rev. Stat. §77-1502(Reissue 2003). Failure to include the statement mandates an automatic dismissal of the protest. Neb. Rev. Stat. §77-1502(Reissue 2003). The Board failed to dismiss the protest as required by law. The Board considered, and then denied the

protest. The Taxpayers accordingly appealed the Board's decision on August 20, 2003. (*Appeal Form*).

The Taxpayers implicitly request that the Commission apply the principles of equity (i.e., fairness) to expand its jurisdiction and hear the appeal since the failure to include the statement of reasons for the requested reduction was inadvertent. The Supreme Court has considered this question and held:

"[The Commission's] power of equity is confined to those questions which relate to the liability of the property to assessment, or to the amount thereof. In other words, [the Commission's] equitable power is confined to its review of the specific actions of the county boards of equalization. Therefore [the Commission] does not have the power to apply equitable principles in jurisdictional matters. . . ."

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

The Commission cannot apply its equity authority to create jurisdiction where none exists. Furthermore, the Commission cannot obtain jurisdiction if the Board lacked jurisdiction. The Commission has no authority to act against this fundamental principle of law. *Id.*

The Douglas County Board of Equalization lacked any authority to hear or decide the protest. The Commission

therefore lacks subject matter jurisdiction over the Parties and the subject matter of this appeal, and by law the appeal must be dismissed.

**VI.
CONCLUSIONS OF LAW**

1. The Commission lacks jurisdiction over the Parties and further lacks jurisdiction over the subject matter of this appeal.
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. The Commission cannot apply principles of equity to overcome a jurisdictional defect. *Creighton St. Joseph Regional Hospital v. Tax Equalization and Review Commission*, 260 Neb. 905, 916, 620 N.W.2d 90, 99 (2000).
4. 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. This appeal is dismissed for want of jurisdiction.
2. The Douglas County Assessor's determination of value for tax year 2003 is therefore final.

3. The Taxpayer's real property located at 2619 South 48th Avenue, in the City of Omaha, Douglas County, Nebraska, shall be valued as follows for tax year 2003, as determined by the Assessor:

Land	\$ 7,100
Improvements	\$80,700
Total	\$87,800

4. Any request for relief by any Party not specifically granted by this order is denied.
5. This decision, if no appeal is filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
6. This decision shall only be applicable to tax year 2003.
7. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 4th day of March, 2004. The same were approved and confirmed by Commissioners Hans, Reynolds and Wickersham, and are therefore

deemed to be the Order of the Commission pursuant to Neb. Rev.
Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 4th day of March, 2004.

SEAL

Wm. R. Wickersham, Chair