

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

HARVEY F. MEYER and)	
KAREN MEYER,)	
)	CASE NO. 04SV-5
Appellants,)	04SV-6
)	
vs.)	
)	ORDER DISMISSING
KEYA PAHA COUNTY BOARD OF)	APPEALS FOR
EQUALIZATION,)	WANT OF JURISDICTION
)	
Appellee.)	

SUMMARY OF DECISION

Harvey F. Meyer and Karen Meyer appeal Keya Paha County Board of Equalization orders denying their agricultural use valuation protest for 2004. The Commission, after affording the Parties the opportunity to present evidence and argument on the issue, dismisses the Taxpayers' appeals for want of jurisdiction.

**I.
ISSUES**

The threshold issues presented in the appeal are (1) whether the Commission has personal jurisdiction over the Parties; and, (2) if so, whether the Commission has subject matter jurisdiction over the issues raised in the appeal.

**II.
STATEMENT OF THE CASE**

The Taxpayers own two tracts of land located in Keya Paha County, Nebraska. (E1 - E2). The Taxpayer's filed Applications

for Special Value for each of the subject properties as authorized by law. (E3 - E4). Neb. Rev. Stat. §77-1345 (Cum. Supp. 2004). The Keya Paha County Assessor approved the applications pursuant to law. (E4 - E5). Neb. Rev. Stat. §77-1345.01 (Cum. Supp. 2004).

The Assessor's notice of approval also advised the Taxpayers that they could challenge the value assigned to the subject properties for agricultural use. (E5 - E6). *See also*, Title 350, Neb. Admin. Code, ch. 11, §007.02 (4/2003). The Taxpayers, pursuant to the Assessor's notice, filed valuation protests for each of the subject properties. (E1 - E2). The Keya Paha County Board of Equalization ("the Board") denied each protest. (E1 - E2).

The Taxpayers appealed the Board's decisions on October 12, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission consolidated the appeals, and issued an Order to Show Cause and Notice of Hearing raising the question of jurisdiction. 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 Order to Show Cause in the City of Lincoln, Lancaster County, Nebraska, on June 16, 2005. The Taxpayers and their counsel, Gregory G. Jensen, Esq., participated in the hearing by telephone conference

call. The Board participated by telephone conference call through counsel, Eric A. Scott, Esq., the Keya Paha County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the matter. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument on the question of jurisdiction. The Commission thereafter took the matters under advisement, which now come on for decision.

III. APPLICABLE LAW

Jurisdiction is the inherent power or authority to decide a case. *Riley v. State*, 244 Neb. 250, 255, 506 N.W.2d 45, 48 (1993). 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). If the tribunal below lacks jurisdiction, the Commission cannot acquire jurisdiction. See, e.g., *State v. Erb*, 6 Neb.App. 672, 676, 576 N.W.2d 839, 842 (1998).

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayers are the owners of record of certain agricultural real property as described in the Appeal Forms ("the subject properties").
2. The Keya Paha County Assessor ("the Assessor") approved the Taxpayer's Special Value Applications as authorized by law.
3. This approval occurred after the statutory deadline for protesting assessed value had expired for tax year 2004.
4. The Taxpayers filed valuation protests complaining of the "special values" assigned to their agricultural and horticultural lands on August 13, 2004. (E1 - E2).
5. The valuation protests were filed after the June 30, 2004 statutory deadline found in Neb. Rev. Stat. §77-1502 (Cum. Supp. 2004).

**V.
ANALYSIS**

The right to appeal (protest) is purely statutory. Unless the statute provides for an appeal from the decision of a quasi-judicial tribunal, such right does not exist. *Gage County Bd. of Equalization v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 750, 752, 619 N.W.2d 451, 453 (2000). Typically valuation protests are filed pursuant to Neb. Rev. Stat. §77-1502

(Cum. Supp. 2004). Such protests must be filed prior to July 1 of each year. Neb. Rev. Stat. §77-1502, *supra*.

The Taxpayers' requested and were approved for Special Valuation on July 14, 2004. (E3 - E4). The Special Valuation statutes did not provide for a right to protest the value assigned to agricultural and horticultural land when special value was authorized as of June 30. *See, generally*, Neb. Rev. Stat. §77-1345, *et seq.* (Cum. Supp. 2004). The only valuation protest process authorized by law expired two weeks prior to the date the Taxpayers' special valuation application was approved. Neb. Rev. Stat. §77-1502, *supra*.

The Taxpayers contend, however, that the Assessor notified the Taxpayers in writing of a right to protest the special value assigned to the Taxpayers' land. (E4 - E5). The Assessor did provide such notice, but failed to cite to any authority granting the Taxpayers the right to file valuation protests after July 1. The Taxpayers suggest that Title 350, Neb. Admin. Code, ch. 11, §007.02 (04/2003) confers such authority. The regulation purports to grant this authority, but fails to cite any statutory authority granting a right to protest.

Administrative agencies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb.App. 499,

504 - 505, 583 N.W.2d 353, 356 - 357 (1998). The regulation cites Neb. Rev. Stat. §§77-702, 77-1315, 77-1502 (Reissue 2003) as authority for the valuation protest. Nothing in those statutes authorize valuation protests for agricultural or horticultural land subject to special valuation, and nothing in those statutes confers authority on the Property Tax Administrator to provide for such protests, nor has the Commission found any statute that confers that authority.

The Taxpayers next contend that 2005 Neb. Laws, L.B. 263, §11, provides the statutory right to appeal under the facts presented here. That bill was signed into law by the Governor on March 9, 2005 with an emergency clause, the bill became effective on March 10, 2005. *Wilson & Company, Inc. v. Otoe County et al.*, 140 Neb. 518, 300 N.W. 415 (1941). The Taxpayers contend that this bill is retroactive. The Nebraska Supreme Court explains retroactivity analysis as follows:

"In noncriminal cases, substantive statutes are generally not given retroactive effect unless the Legislature has clearly expressed an intention that the new statute is to be applied retroactively. When determining whether new amendments to existing legislation can be applied retroactively, the critical question is whether the amendment is substantive or procedural, not whether the act or new legislation in

its entirety is substantive or procedural. While substantive amendments generally are not applicable to pending cases, procedural amendments are. A substantive right is one which creates a right or remedy which did not previously exist and which, but for the creation of the substantive right, would not entitle one to recover. A procedural right, on the other hand, is considered simply to be the method by which an already existing right is exercised. A substantive law creates duties, rights, and obligations, whereas a procedural law prescribes the means and methods through and by which substantive laws are enforced and applied."

In re: Interest of Clifford M., 261 Neb. 862, 868, 626 N.W.2d 549, 556 (2001). The Taxpayers can only prevail on their retroactivity analysis claim (1) if the right to appeal is substantive and the Legislature manifested an intent to apply the law retroactively; or (2) if the law is purely procedural.

The right to appeal (protest) is purely statutory. *Gage County*, supra. The right to protest values after approval of a Special Value Application did not exist prior to March 10, 2005, unless the protest was filed prior to June 30. Without this right, the Taxpayers could not, if successful, obtain a reduction in assessed values. The new law is therefore "substantive" as

that term is defined under retroactivity analysis. Nothing in the bill or its legislative history establishes that the Legislature intended the right to appeal to be retroactive. The Taxpayers cannot therefore prevail under the retroactivity analysis enunciated by the Nebraska Supreme Court.

Finally, the Taxpayers suggest that the Commission is authorized to hear the appeal pursuant to Neb. Rev. Stat. §77-5007(10) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §8). This provision of law, however, presumes that the county board of equalization had jurisdiction. The Board lacked any authority to consider the Taxpayers' protests for the reasons set forth above. The Commission cannot acquire jurisdiction if the Board lacked jurisdiction. *See, e.g., State v. Erb*, 6 Neb.App. 672, 676, 576 N.W.2d 839, 842 (1998). The provisions of Neb. Rev. Stat. §77-5007 do not apply.

The Taxpayers have failed to establish that the Board had jurisdiction or that the Commission can obtain subject matter jurisdiction. The record demonstrates both the fact that: the Board did not have jurisdiction; and that this Commission lacks jurisdiction. The Taxpayers' appeals accordingly must be dismissed.

VI.
CONCLUSIONS OF LAW

1. 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).
2. 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. *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).
3. The Commission, in the absence of jurisdiction, must dismiss a pending appeal as a matter of law. *Jacobson v. Jacobson*, 10 Neb.App. 622, 624, 635 N.W.2d 272, 275 (2001).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. These appeals are dismissed with prejudice.
2. Any request for relief by any Party not specifically granted by this Order is denied.
3. This decision, if no appeal is filed, shall be certified to the Keya Paha County Treasurer, and the Keya Paha County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
4. This decision shall only be applicable to the Taxpayers' special valuation tax year 2004 appeals.

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

IT IS SO ORDERED.

Signed and sealed this 28th day of June, 2005.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

SEAL

Wm. R. Wickersham, Chair

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.