

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

D & N EVENT CENTER,)	
)	
Appellant,)	CASE NO. 06C-587
)	
vs.)	FINDINGS AND ORDER DISMISSING
)	APPEAL FOR LACK OF JURISDICTION
LINCOLN COUNTY BOARD OF)	(Void Assessment)
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on December 21, 2006, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdiction Untimely filing) issued December 6, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Larry Haneborg, President of D & N Event Center was present by teleconference. The Lincoln County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Mr. Joe W. Wright, a Deputy County Attorney, for Lincoln County, Nebraska. The Commission took statutory notice, heard testimony and argument.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing.

**I.
FINDINGS**

The Commission finds and determines that:

1. D & N Event Center ("The Taxpayer") is the owner of record of certain real property described in the appeal as Simon 2nd Replat (of Simon replat) of Pte. SE¼, Section 9, Township 13, Range 30, Lot 1, Lincoln, County Nebraska ("the subject property").
2. The County Board notified the Taxpayer that the subject property was considered omitted property for the tax year 2006 and gave notice of a proposed taxable value. (E2).
3. The Taxpayer protested the value proposed by the County Board. (E1).
4. The County Board granted relief in part. (E1).
5. The Taxpayer's appeal was received by the Commission on December 1, 2006. (Case File)
6. An Order to Show Cause and Notice of Hearing (Jurisdiction Untimely Filing) was issued by the Commission on December 6, 2006, directing the Taxpayer to show why the appeal should not be dismissed for want of jurisdiction.

**II.
APPLICABLE LAW**

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commission's rules and regulations or Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2006).

2. 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. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).
3. The Commission obtains jurisdiction over an appeal when the appeal, 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 and the filing fee is timely received and thereafter paid. Neb. Rev. Stat. §77-77-5013 (Cum. Supp. 2006).
4. Appeals from County Board of Equalization decisions made pursuant to section 77-1502 must be filed on or before August 24 of each year. Neb. Rev. Stat. 77-1510 (Cum. Supp. 2006).
5. An appeal is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission on or before the filing deadline. Neb. Rev. Stat. §77-5013 (Cum. Supp. 2006).
6. The Commission cannot acquire jurisdiction if the County Board did not have jurisdiction. *See, e.g. Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).
7. Omitted property means, for the current tax year, any taxable real property that was not assessed on March 19 and any taxable tangible personal property that was not assessed on May 1. Omitted property also means any taxable real or tangible personal property that was not assessed for any prior tax year. Omitted property does not include property

- exempt under subdivisions (1)(a) through (d) of section 77-202, listing errors of an item of property on the assessment roll of the county assessor, or clerical errors as defined in section 77-128. Neb. Rev. Stat. §77-135 (Cum. Supp. 2006).
8. A County Board of Equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the assessor pursuant to section 77-1318.01 or for correction of clerical errors as defined in section 77-128 that result in a change of assessed value. Neb. Rev. Stat. §77-1507(1) (Cum. Supp. 2006).
 9. A clerical error is a transposition of numbers, mathematical error, computer malfunction causing programing and printing errors, data entry error, items of real property other than land identified on the wrong parcel incorrect ownership, or certification of an incorrect valuation to political subdivisions. Neb. Rev. Stat. §77-128 (Reissue 2003).
 10. If real property is omitted in the current year the county board is required to send notice on or before June 1. Neb. Rev. Stat. §77-1507(1) (Cum. Supp. 2006).
 11. Section 77-1318.01 of Nebraska Statutes requires the filing of an information statement with a county assessor if the value of an improvement to be made exceeds \$2500.00. Neb. Rev. Stat. 77-1318.01 (Reissue 2003).
 12. A void action is nugatory and ineffectual so that nothing can cure it. *See, Miller v. School District No. 69 of Pawnee County*, 208 Neb. 290, 303 N.W.2d 483 (1981).

III. ANALYSIS

The issues presented in this proceeding are whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer if the appeal was not timely filed by the Taxpayer or if the County Board did not have jurisdiction .

The evidence in this case is that the subject property had been exempt from taxation for the year 2005 and that neither an affidavit for continuation of that exemption or an application for a new exemption were filed for the tax year 2006. Assessment is defined as the act of listing the description of real property, determining its taxability, determining its taxable value, and placing it on the assessment roll. Neb. Rev. Stat. 7§7-126 (Reissue 2003). If real property is “assessed”, the assessor is required to mail notice of any change of value on or before June 1. Neb. Rev. Stat. 77-1315 (Cum. Supp. 2006). There is no evidence that the assessor “assessed” the subject property for the tax year 2006 or that any notice of value was given by the assessor to the Taxpayer. A County Board may meet at any time for the purpose of assessing omitted property if a clerical error has occurred or an improvement with a value of \$2,500 or more was not reported to the assessor. Neb. Rev. Stat. §77-1507 (Cum. Supp. 2006). There is no evidence in this case that a clerical error as defined in section 77-128 was made by the assessor. There is no evidence in this case that the Taxpayer improved the subject property and failed to report that improvement to the assessor. The County Board was without jurisdiction or authority to act pursuant to section 77-1507(1) of Nebraska Statutes. An action taken without authority is void. *See, Miller v. School District No. 69 of Pawnee County*, 208 Neb. 290, 303 N.W.2d 483 (1981). The attempted assessment of the subject property by the County Board is void. *Id.*

The Taxpayer's appeal was mailed to the commission. (Case File). The envelope in which the appeal was mailed does not bear a postmark. (Case File). An appeal to be timely filed must be received by the Commission on or before the filing deadline or be mailed in an envelope bearing a legible postmark on or before the filing deadline. Neb. Rev. Stat. 77-5013 (Cum. Supp. 2006). The Taxpayer's appeal was received on December 1, 2006. Had the County Board acted lawfully the filing deadline for the Taxpayer's appeal would have been within thirty days after the County Board's decision. Neb. Rev. Stat. 77-1507(3) (Cum. Supp. 2006). The County Board made its decision on October 30, 2006. (E1). The Taxpayer's appeal was received by the Commission more than 30 days after the County Board's decision.

The Commission does not have jurisdiction both because the attempted assessment of the subject property by the County Board is void leaving no action, order, decision, or determination that could be appealed and because the appeal was not timely filed.

IV. CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction.

V. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

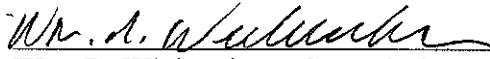
1. The Assessment of Simon 2nd Replat (of Simon replat) of Pte. SE $\frac{1}{4}$, Section 9, Township 13, Range 30, Lot 1, Lincoln, County Nebraska by the Lincoln County Board of Equalization is Void.


2. The Appeal of D & N Event Center concerning the taxable valuation of Simon 2nd Replat (of Simon replat) of Pte. SE¼, Section 9, Township 13, Range 30, Lot 1, Lincoln, County Nebraska is dismissed for want of jurisdiction.
3. This decision, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
4. Each party is to bear its own costs in this matter.
5. This decision shall only be applicable to tax year 2006.

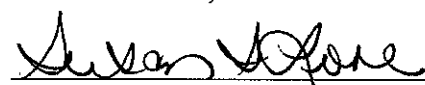
IT IS SO ORDERED.


Dated December 27, 2006.




Wm. R. Wickersham, Commissioner


Robert L. Hans, Commissioner


Susan S. Lore, Commissioner


William C. Warnes, Commissioner

SEAL

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 PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LW IN NEBRASKA REVISED STATUTE §77-5019 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.