

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

RUTH M. LATENSER)	
)	
Appellant,)	CASE NOS. 05E-004, 05E-005,
)	and 05E-006
vs.)	
)	FINDINGS AND ORDER DISMISSING
DOUGLAS COUNTY BOARD OF)	APPEALS FOR WANT OF
EQUALIZATION,)	JURISDICTION
)	
and)	
)	
INTERCESSORS OF THE LAMB INC.)	
)	
Appellees.)	

The above-captioned cases were called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"). The hearing originated in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska. The hearing began on December 21, 2005, and was continued to February 6, 2006. Commissioners Wickersham, Lore, Reynolds and Hans were present on December 21, 2005. Commissioners Wickersham, Lore, and Hans were present on February 6, 2006. Commissioner Reynolds presided at the portion of the hearing held on December 21, 2005. Commissioner Wickersham presided at the portion of the hearing held on February 6, 2005. Commissioner Reynolds did not participate in this decision.

Ruth M. Latenser ("the Taxpayer") appeared through Mr. Michael D. McClellan, Esq., her attorney, by teleconference. The Douglas County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Ms. Christine A. Lustgarten, Esq., a Deputy County Attorney, for Douglas County, Nebraska. Intecessors of the Lamb Inc.,

appeared, by teleconference, through Mr. William E. Pfeiffer, Esq., its attorney. The Commission took statutory notice, received and heard testimony.

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

I. FINDINGS

The Commission finds and determines that:

A. PROCEDURAL FINDINGS

1. Intercessors of the Lamb Inc., is the owner of record of certain parcels of real property fully described in the appeals (“the subject property”).
2. The County Board on August 9, 2005, granted an application for exemption of the subject property from taxation . (E1:1-7, E2:1-7, and E3:1-7)
3. The Taxpayer appealed the actions of the County Board on September 8, 2005. (Case file).
4. The County Board moved for dismissal. (Case file).
5. Intercessors of the Lamb Inc., moved for dismissal. (Case file).

II. CONCLUSIONS OF 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 Commissions Rules and Regulations or Neb. Rev. Stat. § 77-5016(3) (Cum. Supp. 2004).

2. If an application for exemption is granted by a county board, the county assessor is the only person who may appeal that decision. Neb. Rev. Stat. §77-202.04 (Supp. 2005).

III. ANALYSIS

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer when the Taxpayer is prohibited by statute from filing the appeal. The Commission cannot hear an appeal that was not filed in accordance with the statutory requirements. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 905 (2000). The Taxpayer asserts that the statutory provision allowing only the assessor to appeal the granting of a request for exemption violates the Taxpayer's due process rights and right to equal protection. The Commission has no authority to consider challenges to the constitutionality of a statute. *In re Metropolitan Utilities Dist. of Omaha*, 179 Neb. 783, 792, 140 N.W.2d 626, 632 (1966). The Commission is authorized to hear appeals from decisions of a county board of equalization. Neb. Rev. Stat. §77-5007 (10) (Supp. 2005). The noted section cannot be read to authorize the Commission to hear appeals that cannot be filed. The Commission must order dismissal of the appeal.

**IV.
ORDER**

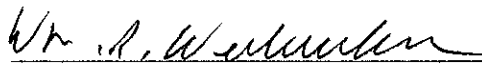
IT IS THEREFORE ORDERED THAT:

1. The appeals of Ruth M. Latenser in Case Nos. 05E-004, 05E-005, and 05E-006 are dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.

Signed and Sealed February 13, 2006.



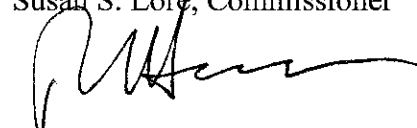
SEAL



Wm. R. Wickersham, Chairperson



Susan S. Lore, Commissioner



Robert L. Hans, Commissioner