

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

SANDRA L. PAVEL,)	
)	
Appellant,)	CASE NO. 06OP-004
)	
vs.)	FINDINGS AND ORDER DISMISSING
)	PETITION FOR WANT OF
DOUGLAS COUNTY BOARD OF)	JURISDICTION
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 February 13, 2007, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdictional Authority of the Commission) issued January 25, 2007. Commissioners Wickersham, Lore and Hans were present. Commissioner Wickersham presided at the hearing.

Sandra L. Pavel ("the Taxpayer") appeared, by telephone through her legal counsel David E. Pavel. The Douglas County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Ms. Kristin M. Lynch, a Deputy County Attorney, for Douglas County, Nebraska. The Commission took statutory notice, and heard 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. The Taxpayer is the owner of record of certain real property described in the petition as Lot 2 Block 5, West Highlands Addition to the City of Omaha, Douglas County Nebraska (“the subject property”).
2. The Taxpayer’s petition was received by the Commission on January 3, 2007, but was deemed timely filed, 2006 because the envelope bore a United States mail postmark of December 29, 2006. (Case File)
3. An Order to Show Cause and Notice of Hearing (Jurisdictional Authority of the Commission) was issued by the Commission on January 25, 2007, directing the Taxpayer to show why the appeal should not be dismissed for want of jurisdiction.
4. The County Board stipulated that: the Taxpayer had filed a timely protest pursuant to section 77-1502 of Nebraska Statutes, the County Board did not act on the Taxpayer’s protest, and no notice of County Board action was mailed to the Taxpayer.

**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. A County Board is required to act on a protest filed pursuant to section 77-1502 of Nebraska Statutes on or before July 25 of each year unless the deadline for hearing protests has been extended. Neb. Rev. Stat. §77-1502 (Supp. 2005).
4. The county clerk is required to mail notice to the protestor of a County Board's decision on a protest filed pursuant to section 77-1502. Neb. Rev. Stat. 77-1502 (Supp. 2005).
5. Any person otherwise having the right to file an appeal with the Commission may petition the Commission for a determination of actual value of real property if a failure to give notice prevented timely filing of an appeal provided for in sections 77-1501 to 77-1507 of Nebraska Statutes. Neb. Rev. Stat. §77-1507.01 (Cum. Supp. 2006).

III. ANALYSIS

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the Petition of the Taxpayer.

The Taxpayer's petition is filed pursuant to section 77-1507.01 of the Nebraska Statutes alleging that a failure to give notice prevented timely filing of an appeal. An appeal of a decision on a protest filed pursuant to section 77-1502 of Nebraska Statutes must be made in accordance with section 77-1510 of Nebraska Statutes. Neb. Rev. Stat. §77-1510 (Cum. Supp. (2004)).

Section 77-1507.01 of Nebraska Statutes applies only to appeals provided for in sections 77-1501 to 77-1507 of Nebraska Statutes. Section 77-1507.01 of Nebraska Statutes by its plain terms is not applicable if an appeal would have been made pursuant to section 77-1510 of Nebraska Statutes.

The Taxpayer argues that the provisions of section 77-1510 of Nebraska Statutes need not be considered in this case and that the pertinent section for consideration is section 77-5013 of Nebraska Statutes. Section 77-5013 of Nebraska Statutes regulates appeals filed with the Commission it does not independently provide for appeal. The only authorization for an appeal of a decision made by a County Board of Equalization on a protest filed pursuant to section 77-1502 of Nebraska Statutes is contained in section 77-1510 of Nebraska Statutes.

The petition must be dismissed

The County Board argued that the Commission's decision in Case No 06R-489 is res judicata and that the petition should be dismissed. The Commission need not consider that argument.

IV. CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over the subject matter of the Taxpayer's petition.

**V.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Petition of Sandra L. Pavel, concerning the taxable value of Lot 2 Block 5, West Highlands Addition to the City of Omaha, Douglas County Nebraska is 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.
4. This decision shall only be applicable to tax year 2006.

IT IS SO ORDERED.

Dated February 15, 2007.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, 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 LAW IN NEBRASKA REVISED STATUTE §77-5019 (Cum. Supp. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.