

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

THOMAS M. HIGGINS III ET AL.,)	
)	
Appellant,)	CASE NO. 06C-057
)	
vs.)	FINDINGS AND ORDER DISMISSING
)	APPEALS FOR WANT OF
DOUGLAS COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned appeal was called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"), issued on July 5, 2007. 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 July 20, 2007. Commissioners Wickersham, Warnes, and Sorensen were present. Commissioner Wickersham presided.

Brett Cook appeared by teleconference. No one appeared on behalf of Thomas M. Higgins III et al.. Ms. Kristin M. Lynch, a Deputy County Attorney, for Douglas County, Nebraska, appeared by teleconference for the Douglas County Board of Equalization ("the County Board"). The Commission took statutory notice, received exhibits, 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 law, on the record or in writing.

**II.
FINDINGS**

The Commission finds and determines that:

PROCEDURAL FINDINGS

1. Thomas M. Higgins III et al., (“the Taxpayer”) is the owner of record of certain real property described in the appeal as 13530 I Circle, Omaha Industrial Foundation District III, Lot O, Block 4, Douglas County, Nebraska, (“the subject property”).
2. An Order to Show Cause and Notice of Telephonic Hearing (Jurisdictional Authority of the Commission) was issued by the Commission on July 5, 2007, directing the Taxpayer to show why the appeal should not be dismissed for want of jurisdiction.

SUBSTANTIVE FINDINGS

1. The appeal was signed by Brett Cook.
2. Brett Cook is not an attorney.
3. Brett Cook is an employee of Darland Properties.
4. Darland Properties does not have an ownership interest in the subject property.
4. Brett Cook is not a full time employee of the Taxpayer.

II. CONCLUSIONS OF LAW

1. 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).

2. An appeal filed by a person without authority to file the appeal is void. *See, Waite v. Carpenter*, 1 Neb. App. 321, 496 N.W.2d 1 (1992).

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 appeal was signed and filed by an employee of an entity other than the Taxpayer. The unauthorized practice of law is prohibited by statute. *Neb. Rev. Stat.* §7-101 (Reissue 1997). That statute as interpreted by the Nebraska Supreme Court governs person who can appear before the Commission on behalf of another. Brett Cook is not an attorney and could not appear as legal counsel for the Taxpayer. The Commission has authority to adopt and promulgate rules and regulations necessary to regulate persons and proceedings within the Commission's jurisdiction and authority. *Neb. Rev. Stat.* §77-5021 (Reissue 2003). No person other than a party, legal counsel for a party, or a person authorized by the rules can file an appeal on behalf of another person. 442 *Neb. Admin. Code*, ch5, §001.02H, (01/05) . A party is defined as someone who will be directly affected by the outcome of an appeal. 442 *Neb. Admin. Code*, ch 2 §001.07 (01/05). Some one who will be directly affected by the outcome of an appeal is someone who has a real interest in the appeal or has a legal or equitable right, title, or interest in the subject of the appeal. *Id.* The evidence before the Commission does not show that an employee of Darland Industries is a person who could file an appeal on behalf of the Taxpayer. Appeals filed without authority for their filing are void. *See. Waite v. Carpenter*, 1 Neb. App. 321, 496 N.W.2d 1 (1992).

**IV.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The Appeal of Thomas M. Higgins III, et al., 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.

Signed and Sealed. July 24, 2007.

Wm. R. Wickersham, Commissioner

Ruth A. Sorensen, 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 (REISSUE 2003). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.