

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

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|-------------------------|---|------------------------|
| ROBERT E. BEHRENS, |) | |
| |) | |
| Appellant, |) | Case No. 09R 616 |
| |) | |
| v. |) | DECISION AND ORDER |
| |) | DISMISSING FOR WANT OF |
| DOUGLAS COUNTY BOARD OF |) | JURISDICTION |
| EQUALIZATION, |) | (Filing Defect) |
| |) | |
| Appellee. |) | |

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Robert E. Behrens ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission") should not be dismissed. 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 January 27, 2010, pursuant to an Order to Show Cause (Filing Defect) issued January 13, 2010. Commissioners Wickersham and Salmon were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Hotz was excused from participation by the presiding hearing officer. Commissioner Warnes was absent. The appeal was heard by a quorum of a panel of the Commission.

Robert E. Behrens was not present. Cora Behrens the spouse of Robert Behrens and co-owner of the parcel described in the appeal was present. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, participated in the hearing by telephone, as legal counsel for the Douglas County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008). The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

Whether the appeal should be dismissed for failure to timely file required documentation.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. An appeal was mailed to the Commission on September 10, 2009 and was received on September 11, 2009. (Case File).
2. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File).
3. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.
4. Douglas County has adopted a resolution extending the date for hearing protests pursuant to Section 77-1502 of Nebraska Statutes.

**III.
APPLICABLE LAW**

1. The Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid and 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. Neb. Rev Stat. §77-5013 (Cum. Supp. 2008).

2. The documentation required by Section 77-5013 of Nebraska Statutes is deemed timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal.
3. An appeal from an action of a county board of equalization pursuant to section 77-1502 of Nebraska Statutes must be filed on or before August 24, or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under Section 77-1502 .
4. 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).

IV. ANALYSIS

Section 77-1503 requires timely filing of a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from. The County Board has two proceedings concerning the parcel described in the appeal. First the County Board denied the protest filed pursuant to section 77-1502. A copy of that decision, order, determination, or action, or other information to document that decision, order, determination, or action appealed from was not timely filed and in fact had not been filed

as of the date of the hearing on which this order is based. The Commission cannot waive the provisions of section 77-5013 and does not have jurisdiction in the appeal based on the County Boards decision, order, determination, or action taken on the Taxpayer's protest filed pursuant to section 77-1502.

The County Board determined that a clerical error had been made in its initial decision. The County Board corrected the clerical error on September 22, 2009. Clerical errors may be corrected by a County Board pursuant to section 77-1507 of Nebraska Statutes. A protest of a proposed correction may be made to the County Board. Neb. Rev. Stat. §77-1507 (Reissue 2010). The action of a County Board on a protest filed pursuant to section 77-1507 may be appealed to the Commission within 30 days of the board's final decision. Neb. Rev. Stat. §77-1507 (Reissue 2010). There is no evidence that a protest was filed pursuant to section 77-1507 of Nebraska Statutes and the appeal was filed before the County Board acted on the clerical error. The appeal filed cannot be considered an appeal of the County Board's action correcting a clerical error.

**V.
CONCLUSIONS OF LAW**

1. The Commission does not have subject matter jurisdiction in this appeal.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 09R 616 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed February 3, 2010.

Nancy J. Salmon, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE
REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2008), OTHER
PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**