

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

BRIAN J. LASSALLE,)	
)	
Appellant,)	Case No. 09R 255
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
LANCASTER 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 Brian J. Lassalle ("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 11, 2010, pursuant to an Order to Show Cause (Filing Defect) issued December 30, 2009. Commissioners Wickersham, and Salmon were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer. Commissioner Hotz was absent. The appeal was heard by a quorum of a panel of the Commission.

Brian J. Lassalle was present at the hearing by telephone. No one appeared as legal counsel for the Taxpayer.

Michael E. Thew a Deputy County Attorney for Lancaster County was present at the hearing by telephone as legal counsel Lancaster County Board of Equalization ("the County Board").

The Commission took statutory notice 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 deliver the filing fee.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. An appeal was received on September 10, 2009. (Case File).
3. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File).
4. Documentation of the decision, order, determination, or action appealed from specified by Section 77-5013 (3) of Nebraska Statutes was received on November 17, 2009. (Case file).
5. The envelope in which the documentation was delivered is postmarked November 16, 2009. (Case File).
6. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statues.

7. Lancaster 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

The appeal form in this case was filed on September 10, 2009 with the filing fee. Various documents were filed with the appeal form. The appeal form filed on September 10, 2009, was not accompanied by a copy of the final determination, action, order, or decision being appealed from.

One of the documents filed with the appeal form was a letter from the Lancaster County Board of Commissioner's dated July 8, 2009, advising the Taxpayer that a referee had reviewed his protest and that the County Board would make a final determination on or before August 10, 2009. The appeal form does show that an appeal is being lodged from a decision of the Lancaster County Board. The information on the appeal form does not describe the decision being appealed by date, subject, or result. The information on the appeal form is not sufficient documentation of the final determination appealed from to substitute for a copy of the decision.

A letter dated August 6, 2009, stating the County Board's final determination was filed with the Commission on November 17, 2009. The Taxpayer asserted that if the final determination of the County Board would have been available to him on or before September 10, 2009, that it would have been furnished to the Commission on a timely basis. The letter from the County Board describing its final decision is dated August 6, 2009. The County Board's previous letter advised that a decision would be made prior to August 10, 2009. The Taxpayers appeal form is dated September 1, 2009. The Taxpayer testified that the County Board's final determination was attached to the appeal form. The file shows that the attachment to the appeal was in fact a letter advising that a decision would be made later. The Taxpayer has not shown

that the County Board failed to give notice of its final determination as required by statute.

**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 255 dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 15, 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.