

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Elizabeth Esther Duerfeldt,
Appellant,

v.

Richardson County Board of Equalization
Appellee

Case No: 12A 051

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on December 20, 2012. Richard L. Halbert appeared telephonically at the hearing before the Commission as legal counsel for the Taxpayer. Robert Meyer, Richardson County Attorney, appeared telephonically on behalf of the Richardson County Board of Equalization. The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

II. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that 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.¹ Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 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 77-1502.² Parties cannot confer subject matter

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On August 27, 2012, the Commission received an envelope, Postmarked August 24, 2012, containing an appeal of the determination of the Richardson County Board of Equalization made pursuant to Neb. Rev. Stat. § 77-1502 (Reissue 2009). (Case File). The envelope did not contain a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from (Decision). The envelope did contain a document setting forth the 2012 assessed value as determined by the County Assessor, the value requested by the Taxpayer, and a recommended value for the 2012 tax year, but the document did not contain the decision of the Richardson County Board of Equalization. The Taxpayer called as a witness Mark Caspers who testified that he assisted the Taxpayer in preparing the Appeal to the Commission and that he sent the Taxpayer's appeal packet, along with 20 packets for other property owners,⁴ to Marvin Caspers to obtain signatures and processing. Mark Caspers testified that he did not keep a copy of the appeals that were sent to the Commission but that he retained a copy of the documents included with the appeals and the Decision for the Taxpayer's appeal was in that set of copies. The Taxpayer called as a witness Marvin Caspers who testified that he was contacted by Mark Caspers on August 24, 2012, to obtain the Taxpayer's signature and process the appeals. Marvin Caspers further testified that the packet was mailed on August 24, 2012, and that he believed that the Decision was included. Marvin Caspers further testified that he did not make copies of the packets that he prepared and sent to the Commission. The deadline for filing the appeal for tax year 2012 was 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 77-1502.⁵ The County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year was August 24, 2012. The appeal is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission, or received by the

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ These 20 appeals originated in a county other than Richardson County.

⁵ Neb. Rev. Stat. §77-1510 (Reissue 2009).

Commission on or before the date specified by law for filing the appeal.⁶ The envelope did not contain a copy of the Decision, as required by Neb. Rev. Stat. § 77-5013. Therefore, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

- V. The Commission does not have jurisdiction to hear the above captioned appeal.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. This Order, if no appeal is filed, shall be certified within thirty days to the Richardson County Treasurer, and to the officer charged with preparing the tax list for Richardson County as follows:

Pam Vice
1700 Stone St.
Falls City, NE 68355

Connie Kennedy
1700 Stone St.
Falls City, NE 68355

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED January 11, 2013.

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner

⁶ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).