

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

M. Eileen Stovall,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee,

Case No: 12R 189

**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 February 25, 2013. Jennifer Stovall Dick appeared telephonically at the hearing before the Commission. Nicole O'Keefe, Deputy Sarpy County Attorney, appeared telephonically on behalf of the Sarpy 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 jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

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

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

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

III. ANALYSIS

On August 27, 2012, the Commission received an envelope containing an appeal of the determination of the Sarpy County Board of Equalization (County Board) made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The deadline for filing appeals of these determinations for tax year 2012 was on or before August 24, or on or before September 10 if the county had adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁴ The Sarpy County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2012 was August 24, 2012, for this appeal. An appeal to the Commission 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 commission on or before the date specified by law for filing the appeal.⁵ The envelope containing the appeal was postmarked August 25, 2012, and received by the Commission on August 27, 2012. (Case File). Therefore, the Commission determines that the appeal was not timely filed.

The Commission determines that it does not have jurisdiction over the appeal. 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.⁶

At the hearing, the parties indicated that there may be a pending Motion to Confess Judgment based upon a stipulation between the parties. At the request of the parties, the Commission granted the parties 14 days to submit the motion and stipulation to the Commission for consideration. The Commission has since received the stipulation and motion. The stipulation and motion of the parties does not contain any evidence or information that would impact the Commission's determination regarding jurisdiction. Therefore, based upon our determination in this matter to show cause, the Commission does not have jurisdiction to grant a motion to Confess Judgment in this appeal.

IV. CONCLUSION

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

⁴ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁵ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

⁶ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

ORDER

IT IS THEREFORE ORDERED THAT:

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

Dan Pittman
1210 Golden Gate Dr. Ste 1122
Papillion, NE 68046

Rich James
1210 Golden Gate Dr.
Papillion, NE 68046

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

3. Each party is to bear its own costs in this matter.
4. This order is effective for purposes of appeal March 8, 2013.

SIGNED AND SEALED March 8, 2013.

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner