

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Donald J. Keller,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 14A 130 & 14A 131

**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 November 18, 2014. Joshua J. Wendell appeared telephonically at the hearing before the Tax Equalization & Review Commission (the Commission) as legal counsel for the Taxpayer. Randy Fair, Deputy Keith County Attorney, appeared telephonically on behalf of the Keith County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal jurisdiction 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 pursuant to section 77-1502 may be appealed to the 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-

¹ See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

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

III. ANALYSIS

On September 2, 2014, the Commission received an envelope containing an appeal of the determination of the Keith County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).⁴ The deadline for filing appeals of these determinations for tax year 2014 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, so the filing deadline for tax year 2014 was August 24, 2014. 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.⁶ The envelope containing the appeal was postmarked August 29, 2014 and received by the Commission on September 2, 2014.⁷ Therefore, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

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

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. This Decision and Order, if no appeal is filed, shall be certified within thirty days to the Keith County Treasurer, and the officer charged with preparing the tax list for Keith County as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.) as follows:

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).

⁴ See, Case File.

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

⁶ Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

⁷ See, Case File.

Renee Zink
511 N Spruce, Rm 200
Ogallala, NE 69153

Ronda Johnson
511 N Spruce St., Room 103
69153

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

SIGNED AND SEALED January 23, 2015

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner