

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jason C. Modlin,
Appellant,

v.

Dakota County Board of Equalization,
Appellee

Case No: 16R 0037

ORDER FOR DISMISSAL

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

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on October 14, 2016. Jason C. Modlin, (the Taxpayer) appeared at the hearing before the Commission. Kim Watson, Dakota County Attorney, appeared telephonically on behalf of the Dakota County Board of Equalization (the County Board). The Tax Equalization & Review Commission (the Commission) took notice of its case files for the purpose of determining personal and subject matter jurisdiction. The Taxpayer asserts that the Commission has jurisdiction over his appeal. He is appealing a change in value as determined by the County Assessor on July 11, 2016. The change was made to correct a clerical error by the County Assessor.

The Commission received evidence and heard argument regarding the Jurisdiction of the Commission to hear this appeal.

II. STANDARD OF REVIEW

The Commission obtains jurisdiction over an appeal when the appeal form 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 “Jurisdiction is the inherent power or authority to decide a case.”² The Commission only has that authority which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction

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

² *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

necessary to achieve the purpose of the relevant provisions or act.³ 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.⁴

A county board of equalization may meet at any time for the correction of clerical errors that result in a change of assessed value of real property.⁵ The county board of equalization must then give notice of the correction to the owner of the property at his last known address.⁶ The owner may protest the change in value by filing a protest within 30 days of the mailing of notice.⁷ The county board of equalization must then make a final decision on the protest within thirty days of filing of the protest.⁸ The action of the county board of equalization upon a protest filed pursuant to Neb. Rev. Stat. § 77-1507 may be appealed to the Tax Equalization and Review Commission.⁹ 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.¹⁰

III. FACTS & ANALYSIS

The Taxpayer appeals the County Assessor's July 11, 2016 action changing the assessed value of his property to \$185,780. The evidence introduced at the jurisdictional show cause hearing showed that the Taxpayer initially received notice of a higher valuation of \$257,680 on June 1, 2016. The recent assessment history of the Subject Property included several clerical errors that had been corrected when brought to the attention of the County Assessor and County Board. The Taxpayer, on his way to file a protest of this valuation with the County Board, discussed the matter with the County Assessor who agreed that the higher valuation was the result of a clerical error and that the Assessor would correct it. The County Assessor then brought this error to the attention of the County Board. The County Board took no official action to correct the clerical error as authorized under Neb. Rev. Stat. §77-1507, but the County Assessor subsequently sent notice of a lowered value of the property to the Taxpayer. The

³ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

⁴ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁵ Neb. Rev. Stat. §77-1507(1) (2014 Cum. Supp.).

⁶ Neb. Rev. Stat. §77-1507(1) (2014 Cum. Supp.).

⁷ Neb. Rev. Stat. §77-1507(1) (2014 Cum. Supp.).

⁸ Neb. Rev. Stat. §77-1507(1) (2014 Cum. Supp.).

⁹ Neb. Rev. Stat. §77-1507(3) (2014 Cum. Supp.).

¹⁰ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

Taxpayer was sent notice of the change in value on July 11, 2016. After receiving this notice and requesting the forms to file a protest, the Taxpayer stated that he was told by a county employee that his next step was to file an appeal with the Commission. The Taxpayer did not file a protest to the County Board as prescribed in Neb. Rev. Stat. §77-1507.

Since no protest was filed by the Taxpayer, the County Board did not take official action under §77-1507. Although the evidence indicates there was a discussion between the County Assessor and the County Board that led to the notice of change issued by the County Assessor on July 11, 2016, no action was taken by the County Board as required by §77-1507 to correct a clerical error.

Since the change was made by the County Assessor and a protest was never filed, the County Board did not obtain jurisdiction of the matter. Therefore, the Commission does not have jurisdiction to hear the appeal. An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.¹¹ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”¹²

It should also be noted that based on the evidence presented, the valuation change issued by the County Assessor was done without statutory authority. However, despite this Order of Dismissal, there is nothing now that would prevent the County Board from following the appropriate statutory procedures prescribed in §77-1507 to correct the clerical error. Moreover, if such a clerical error correction is ordered by the County Board, the Taxpayer would then have thirty days to protest that determination of the County Board to the County Board under the same statute.

IV. CONCLUSION

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

¹¹ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

¹² *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012).

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed.

This decision, if no appeal is filed, shall be certified within thirty days to the Dakota County Treasurer, and the officer charged with preparing the tax list for Dakota County as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.) as follows:

Jeff Curry
PO Box 9
Dakota City, NE 68731

Robert Giese
PO Box 863
Dakota City, NE 68731

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

SIGNED AND SEALED October 17, 2016.

Seal

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner