

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

Coljo Investments, LLC,  
Appellant,

v.

Dawes County Board of Equalization  
Appellee

Case No: 16P 0001

**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 22, 2016. John Lecher-Zapata, an officer of Coljo Investments, LLC (the Taxpayer) was present at the hearing. Adam Edmund, Deputy Dawes County Attorney, appeared telephonically on behalf of the Dawes County Board of Equalization (the County Board). The Commission took notice of its case files for the purposes of determining personal jurisdiction and subject matter jurisdiction. 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.<sup>1</sup> Any action of a county board of equalization on the valuation of personal property under Neb. Rev. Stat. §77-1233.04 and §77-1233.06 may be appealed to the Commission.<sup>2</sup>

Jurisdiction is the inherent power or authority to decide a case.<sup>3</sup> Parties cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver,

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. §77-5007(5) (2014 Cum. Supp.).

<sup>3</sup> *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

estoppel, consent, or conduct of the parties.<sup>4</sup> The Commission only has the authority which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act.<sup>5</sup>

### III. ANALYSIS

On May 31, the Dawes County Assessor (the County Assessor) issued a “Notice of Failure to File Personal Property Return” to Panhandle Center, LLC.<sup>6</sup> On June 7, 2016, the Taxpayer submitted a letter to the Dawes County Clerk stating:

Please consider this my protest of the valuation on any of my property, I, Coljo Investments, Inc., or Panhandle Center, LLC owed in Dawes County, Nebraska. At this time I am requesting that a hearing be set with the County Commissioners as soon as possible.<sup>7</sup>

The Dawes County Clerk (the County Clerk) responded to the Taxpayer’s letter on June 7, 2016, stating that the Taxpayer needed to state a reason for the protest.<sup>8</sup> On June 8, 2016, the County Clerk sent another letter to the Taxpayer stating that an appointment had been set on July 18, 2016, for the Taxpayer to meet with the County Board.<sup>9</sup> On July 21, 2016, the County Board sent notice to the Taxpayer denying its personal property protest. (Case File). On August 19, 2016, the Commission received an appeal of the decision of the County Board filed by the Taxpayer. (Case File).

The appeal before the Commission involves personal property. The County Assessor has a duty to examine, check and verify all taxable tangible personal property tax returns.<sup>10</sup> The County Assessor also directs the assessment of all personal property in the county<sup>11</sup> and is required to give notice of his or her action to the taxpayer.<sup>12</sup> A taxpayer may appeal the

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

<sup>5</sup> *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

<sup>6</sup> Exhibit 1.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Exhibit 3.

<sup>9</sup> Exhibit 14.

<sup>10</sup> Neb. Rev. Stat. §77-1233.02 (2009 Reissue).

<sup>11</sup> Neb. Rev. Stat. §77-1233.03 (2009 Reissue).

<sup>12</sup> Neb. Rev. Stat. §77-1233.04(1) (2014 Cum. Supp.).

valuation of personal property by the County Assessor within thirty days of notice in the same manner as prescribed for protests under Neb. Rev. Stat. §77-1502.<sup>13</sup>

A protest under §77-1502 shall be signed and filed with the County Clerk in the county where the property is assessed and “shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies.”<sup>14</sup> This section further states that if a statement of the reason for the protest or a description of the property is not attached to the protest “the protest shall be dismissed by the county board of equalization.”<sup>15</sup>

The County Board argued at the hearing that the Commission lacks jurisdiction over the subject matter of this appeal. It asserts that the Taxpayer failed to comply with the statutory requirement that any protest to a county board shall contain or have attached a statement of the reason or reasons why the requested change should be made.<sup>16</sup> The County Board argues that the protest should have been dismissed by the County Board for lack of jurisdiction at the protest level pursuant to statute.<sup>17</sup>

The Nebraska Supreme Court has held that when reading a statute, effect should be given to all parts of the statute to avoid rejecting as superfluous or meaningless any word, clause, or sentence.<sup>18</sup> The jurisdictional statute in this appeal requires that a protest contain a reason or reasons why the requested change should be made. The Commission determines that nothing in the Taxpayer’s protest letter could be interpreted as stating a reason for the requested valuation change as required by statute. When a protest does not contain a reason why the requested change should be made, the County Board is required to dismiss the appeal.<sup>19</sup>

The Commission finds that because the Taxpayer failed to state a reason for the protest, the County Board was required by law to dismiss the Taxpayer’s protest. Since dismissal is required by law, the County Board did not have jurisdiction to consider the Taxpayer’s protest.

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<sup>13</sup> Neb. Rev. Stat. §77-1233.04(2) (2014 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-1502(2) (2014 Cum. Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-1233.04(2) (2014 Cum. Supp.).

<sup>16</sup> Neb. Rev. Stat. §77-1502(2) (2014 Cum. Supp.).

<sup>17</sup> Neb. Rev. Stat. §77-1502(2) (2014 Cum. Supp.).

<sup>18</sup> See, eg *ML Manager v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566 (2014), see also, *In re Claims Against Atlanta Elev., Inc.*, 268 Neb. 598, 685 N.W.2d 477 (2004).

<sup>19</sup> See, Neb. Rev. Stat. 77-1502(2) (2014 Cum. Supp.).

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.<sup>20</sup> “[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. Therefore, the Commission determines that it does not have jurisdiction over the appeal.

#### **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.

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

Roberta Coleman  
451 Main  
Chadron, NE 69337

Barb Sebesta  
451 Main St. PO Box 790  
69337

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

**SIGNED AND SEALED** January 5, 2017

**Seal**

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Robert W. Hotz, Commissioner

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Steven A. Keetle, Commissioner

<sup>20</sup> See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).