

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rose M. Nelson,
Appellant,

v.

Morrill County Board of Equalization,
Appellee,

And

Darrell Kraupie,
Appellee.

Case No: 16R 0159

**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 14, 2016. Rose M. Nelson, Morrill County Assessor and the Appellant herein, appeared telephonically at the hearing before the Commission. Steven Erdman appeared telephonically as a member of the Morrill County Board of Equalization (the County Board). The Taxpayer, Darrell Kraupie also appeared telephonically. The Commission took notice of its case file for the purpose of determining personal 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

Neb. Rev. Stat. 77-5013 of the Nebraska Statutes provides that 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 Any action of the County Board pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013 on or before August 24 or on or before September 10 if the County Board has adopted a

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

resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 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

III. ANALYSIS

On August 29, 2016, the Commission received an envelope containing an appeal of the determination of the Morrill County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The deadline for filing appeals of the determinations of the Morrill County Board of Equalization for tax year 2016 was on or before August 24.⁴ 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, 2016 and received by the Commission on August 29, 2016. (Case File).

The submitted evidence includes affidavits of the Appellant, Rose M. Nelson, the Morrill County Assessor; Jolly Roeder, the controller of the Holiday Inn located in Kearney, Nebraska; James D. Cawley, the Deputy Morrill County Assessor; and Kacy Buskirk, a staff person of the Morrill County Assessor's Office.

The evidence indicates that on August 24, 2016, the Appellant was attending an Assessor's Workshop at the Holiday Inn Hotel in Kearney, Nebraska. She had apparently brought with her the necessary documents to file the appeal of this case. In her appeal (as County Assessor), she asserts that the Morrill County Board of Equalization reduced the assessed valuation of the property subject to these proceedings, and by doing so, made the property "unequalized with like properties."

In her affidavit, the Appellant avers that she completed the appeal form and provided it to the desk clerk at the Holiday Inn on the morning of August 24, 2016. She also indicated that she had been informed by the hotel clerk that her appeal would be postmarked on that date because the mail would go out on at 2:00 p.m. that day. Included in the submitted evidence is the affidavit of

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

⁵ Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

Jolly Roeder, the hotel controller. Ms. Roeder averred that Ms. Nelson had in fact attended the workshop on August 24, 2016, and had presented a letter to the hotel reception desk to be mailed that day. She also indicated that “Mail Express” comes every day at 2:00 p.m. “to pick up our mailing and then takes the mail to the mailing center.” She also indicated that the hotel has no tracking system in place for individual mailings given to the hotel staff.

As noted above, the postmark on the envelope received by the Commission was August 25, 2016. A late-arriving appeal may still be timely if the mailing meets certain requirements under *Neb. Rev. Stat. § 77-5013(2)* (Cum Supp.2014). An appeal is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission on or before the date specified by law for filing the appeal. Similarly, *Neb. Rev. Stat. § 49-1201* provides that any appeal transmitted through the United States mail which is received by the State of Nebraska or a political subdivision and contains an erroneous cancellation mark shall be deemed filed or made on the date it was mailed if the sender establishes competent evidence that the appeal was deposited in the United States mail on or before the date for filing. The primary issue is whether the Appellant placed the envelope containing the appeal in the United States mail on or before August 24, 2016.

In *Midwest Renewable Energy v. Lincoln County Bd. of Equal.*, 284 Neb. 34, 815 N.W.2d 922 (2012), a penalty was assessed against a taxpayer for the late filing of its personal property tax return. The taxpayer submitted evidence that its employee had placed the personal property tax return in the taxpayer’s “outgoing mail box” designated solely for pickup by a U.S. postal employee prior to its due date. The employee testified that a postal employee came and picked up the outgoing mail on a daily basis. The Nebraska Supreme Court found that in order to come within § 49-1201, the taxpayer had to establish that the return was “deposited in the United States mail.” The matter was remanded in order for the Commission to review that evidence to determine if the return was so deposited.

In the present case, however, the Appellant submitted evidence that the appeal was presented to a hotel employee for pickup that day by Mail Express. No evidence was submitted indicating that the hotel’s outgoing mail was actually delivered to the U.S. Postal Service on the day it was picked up by Mail Express. The Commission finds that delivery to a third party not shown to be

a part of the U.S Postal service does not satisfy the requirements of either *Neb. Rev. Stat. § 77-5013(2)* or § 49-1201. Therefore, that appeal was not filed timely.

IV. CONCLUSION

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 decision, if no appeal is filed, shall be certified within thirty days to the Morrill County Treasurer, and the officer charged with preparing the tax list for Morrill County as follows:

Rose Nelson
PO Box 868
Bridgeport, NE 69336

Morrill County Board of Equalization
P.O. Box 610
Bridgeport, NE 69336

Darrell Kraupie
P.O. Box 100
Bridgeport, NE 69336

as required by *Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.)*.

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

SIGNED AND SEALED January 4, 2017

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner