

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

GREGORY B. SEILER,)	
)	
Appellant,)	Case No. 08R 055
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
KEARNEY COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on an appeal by Gregory B. Seiler ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 508 2nd Avenue, Kearney, Nebraska, on September 16, 2009, pursuant to an Order for Hearing and Notice of Hearing issued July 14, 2009. Commissioners Wickersham, Salmon, and Hotz were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Warnes was excused from participation by the presiding hearing officer.

Gregory B. Seiler was present at the hearing. Les Seiler appeared as legal counsel for the Taxpayer.

David G. Wondra, County Attorney for Kearney County, Nebraska, was present as legal counsel for the Kearney County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Cum. Supp. 2008). The final decision and order of the Commission in this case is as follows.

**I.
ISSUES**

Whether the appeal should be dismissed for failure to sign the protest delivered to the County Board.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has appealed a decision of the County Board to the Commission.
2. The decision of the County Board was based on a protest filed pursuant to section 77-1502 of Nebraska Statutes.
3. The Taxpayer did not sign the protest form delivered to the County Board.
4. The subject property consists of improvements on leased private land.
5. An assessment application as prescribed by section 77-1374 of Nebraska Statutes is not in evidence.
6. The lease of land on which the Taxpayer's improvements are situated requires the lessor to pay all taxes with any increase in taxes attributable to improvements payable by the Taxpayer as additional rent.

APPLICABLE LAW

1. Each County Board is required to meet annually for the purpose of reviewing and deciding written protests filed pursuant to section 77-1502 of Nebraska Statutes. Neb. Rev. Stat. §77-1502(1) (Supp 2007).
2. Protests regarding real property shall be signed and filed after the county assessor's

completion of the real property assessment roll. Neb. Rev. Stat. 77-1502 (1) (Supp 2007).

3. Each protest shall be signed and filed in triplicate with the county clerk of the county where the property is assessed. Neb. Rev. Stat. §77-1502(2) (Supp. 2007).
4. Improvements on leased lands, other than leased public lands are assessed to the owner of the leased lands unless the owner of the leased lands or the lessee files an assessment application with the County Assessor on a form prescribed by the Tax Commissioner. Neb. Rev. Stat. §77-1376 (Supp. 2007).
5. “In order to have standing to invoke a tribunal’s jurisdiction, one must have some legal or equitable, right, title, or interest in the subject of the controversy.” *Douglas County Board of Commissioners v. Civil Service Commission*, 263 Neb. 544, 549, 641 N.W.2d 55, 60 (2002)(Citations omitted).
6. A person without standing may not maintain an appeal. *Community Development Agency of the City of McCook v. PRP Holdings, L.L.C.*, 277 Neb. 1015, 767 N.W.2d 68 (2009).
7. 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. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

IV. ANALYSIS

The subject property consists of improvements on leased private lands. Improvements on

leased lands, other than leased public lands, are assessed to the owner of the leased lands unless the owner of the leased lands or the lessee files an assessment application with the County Assessor on a form prescribed by the Tax Commissioner. Neb. Rev. Stat. §77-1376 (Supp. 2007). The form required by section 77-1376 is not in evidence. The Commission did receive a copy of the lease of land on which the Taxpayer's improvements are located. Paragraph 6 of the lease recognizes the possibility that improvements would be placed on the leased land and that the value of the improvements would be taxed. (E2:8). The lease requires the Lessor to pay the resulting tax. (E2:8). The Lessee is, however, obligated to pay the amount of tax attributable to the value of the improvements as additional rent. (E2:8). Even though the value of the improvements is not assessed as property of the Taxpayer, any tax attributable to their value is payable by the Taxpayer. The leasehold interest of the Taxpayer is also subject to tax and was assessed. The Taxpayer has standing to maintain this appeal.

The Taxpayer filed a protest seeking a reduction in value of the leasehold interest and a change in the valuation of improvements on leased land. (E2:3 & 4). The protest was filed pursuant to section 77-1502 of Nebraska Statutes. Each protest filed pursuant to Section 77-1502 of Nebraska Statutes shall be signed. As a general rule, in the construction of statutes, the word "shall" is considered mandatory and inconsistent with the idea of discretion. *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000). The protest filed by the Taxpayer is unsigned. (E2:3). The issue of jurisdiction of the Commission was raised by the Commission at the hearing on the merits. "The absence of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte." *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746, 752, 635 N.W.2d 112, 118 (2001), citing *Creighton St. Joseph*

Hosp. v. Tax Eq. & Rev. Comm., 260 Neb. 905, 620 N.W.2d 90 (2000). The Commission does not have jurisdiction if the County Board did not have jurisdiction. See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956). Even if the Commission does not have subject matter jurisdiction, it has jurisdiction to determine whether the County Board had jurisdiction. See *State v. Hausmann* 17 Neb.App. 195, 600 N.W.2d 831 (2008).

The remaining question is whether the failure to sign a protest filed pursuant to section 77-1502 deprives the County Board of jurisdiction. If possible, it is necessary to give effect to every word, clause, and sentence of a statute, because the Legislature is presumed to have intended every provision of a statute to have meaning. *Iske v. Papio Nat. Resources Dist.*, 218 Neb. 39, 352 N.W.2d 172 (1984); *Bohm v. DMA Partnership*, 8 Neb. App. 1069, 607 N.W.2d 212 (2000). It is an elementary rule of construction that effect must be given, if possible, to every word, clause, and sentence of a statute. *Ulbrick v. City of Nebraska City*, 180 Neb. 229, 141 N.W.2d 849 (1966).

The requirement that protests filed pursuant to section 77-1502 be signed was placed in law as section 37 of LB 808, passed in the 2006 session of the Nebraska Legislature. The provision originated, however, in section 9 of LB 813, introduced in the 2006 session of the Nebraska Legislature. Neither the legislative history for LB 813 or LB 808 provides a rationale for the new requirement that protests filed with the county board pursuant to section 77-1502 be signed.

The requirement that a protest be signed appears twice in section 77-1502 of Nebraska Statutes. Section 77-1502 of Nebraska Statutes does not, however, specify the consequences of a failure to abide by the dictates of the statute. That consequences are intended can be inferred

from use of the word shall in the statute. In general, if the word shall is used it denotes an act that must occur. If an act must occur, but there are no consequences for failure to act, the requirement is meaningless. There is no indication the legislature intended the requirement that a protest be signed be meaningless.

The County Board must dismiss a protest if the protest does not contain or have attached to it the statement of the reason or reasons for the protest or the description of the property. Neb. Rev. Stat. §77-1502(2) (Supp. 2007). The requirement that the protest be signed is not included in the requirements that must be met to avoid dismissal. Dismissal is, however, an affirmative act. If the County Board did not have jurisdiction, no act is required and the County Board simply could not hear the protest. The requirement that some protests be dismissed for specified reasons is not inconsistent with a conclusion that the County Board does not have jurisdiction over other protests.

**V.
CONCLUSIONS OF LAW**

1. The Commission does not have subject matter jurisdiction in this appeal.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 08R 055 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed November 2, 2009.

Nancy J. Salmon, Commissioner

Robert W. Hotz, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE
REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2008), OTHER
PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**