

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Al M. Znamenacek
Appellant,

v.

Cass County Board of Equalization
Appellee.

Case No: 11R-121

**ORDER FOR DISMISSAL WITH
PREJUDICE**

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

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

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on February 17, 2012, and was resumed on August 7, 2013. Al M. Znamenacek (herein referred to as the “Taxpayer”) appeared telephonically. Allen Sutcliffe, the Cass County Assessor, appeared telephonically on behalf of the Cass County Board of Equalization (herein referred to as the “County Board”) on February 17, 2012, and Nathan Cox, Cass County Attorney, appeared telephonically on behalf of the County Board on August 7, 2013. The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

II. STANDARD OF REVIEW

Nebraska Statutes section 77-5013 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 of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review 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 77-1502.² Parties cannot confer subject matter jurisdiction on a

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ISSUE

Whether the appeal should be dismissed because the Taxpayer did not set forth a reason for protest on his Property Valuation Protest (Form 422) submitted to the County Board on June 30, 2011.

IV. FINDINGS OF FACT AND LAW

Based on a review of the Case File and testimony of the Taxpayer, the Commission finds and determines that:

1. The Taxpayer's Appeal was filed by mail in an envelope showing a postmark of August 24, 2011, and received in the Commission's office on August 25, 2011.
2. The Taxpayer's Protest to the County Board, Form 422, did not set forth a reason for protest, and the County Board denied the Taxpayer's protest for this reason.
3. Nebraska Statutes section 77-1502 requires that the protest set forth a reason for the protest, and that if it does not, "the protest shall be dismissed by the county board of equalization."⁴
4. 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.⁵ Additionally, "if 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."⁶ Therefore, because the Taxpayer's Protest filed with the County Board for the 2011 tax year did not state a reason for protest and was therefore dismissed by the County Board as

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. §77-1502(2) (2012 Cum. Supp.).

⁵ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb.1, 77 N.W.2d 773 (1956).

⁶ *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012).

required by Nebraska Statutes section 77-1502, it follows that the Commission does not have jurisdiction.

V. CONCLUSION

The Commission does not have jurisdiction over the subject matter of the above captioned appeal because the County Board was required to dismiss the Taxpayer's protest based on failure to provide reasoning.

VI. ORDER

IT IS ORDERED THAT:

1. The appeal in Case No. 11R-121 is dismissed.
2. Each party is to bear its own costs in this proceeding.
3. This order is effective for purposes of appeal on August 19, 2013.

Signed and Sealed: August 19, 2013.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.