

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Darlene Schwinck Revocable Trust, Brian
D. Schwinck, Trustee
Appellant,

v.

Dodge County Board of Equalization
Appellee

Case No: 14R 678

**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 19, 2014. Brian D. Schwinck appeared at the hearing before the Commission as the Co-Trustee. Darren Schwinck appeared telephonically at the hearing before the Commission as the Co-Trustee. Timothy E. Sopinski, Deputy Dodge County Attorney, appeared telephonically on behalf of the Dodge County Board of Equalization. The Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction.

II. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes 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

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

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

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 October 3, 2014, the Commission received an appeal of the determination of the Dodge County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The deadline for filing appeals of these determinations for tax year 2014 was 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 77-1502.⁴ The County Board did not adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2014 was August 24, 2014. 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 appeal was hand delivered to the Commission on October 3, 2014. (Case File). Therefore, the Commission determines that the appeal was not timely filed.

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

Brittney King
435 N Park Rm 202
Fremont, NE 68025

Cathy Dill
PO Box 999
Fremont, NE 68026

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.).

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 December 22, 2014.

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner