

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Schaeffer Farms, Inc.,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 15C 108, 15C 109, 15C 181,
& 15C 182

**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 February 24, 2016. Michael Schaefer, appeared telephonically at the hearing before the Commission as the President of Schaeffer Farms, Inc., (the Taxpayer). Andrea Gosnold-Parker, Deputy Sarpy County Attorney, appeared telephonically on behalf of the Sarpy County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and heard argument regarding the Jurisdiction of the Commission to hear these appeals.

II. STANDARD OF REVIEW

Neb. Rev. Stat. §77-5013 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 §77-1502 may be appealed to the Tax Equalization and Review Commission (the 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 resolution to

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

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 25, 2015, the Commission received an envelope from McGregor Interests, Inc. containing the appeals of the determinations of the Sarpy County Board of Equalization for Case Nos. 15C 108 and 15C 109 made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009) and postmarked August 20, 2015.

On August 31, 2015, the Commission received an envelope from McGregor Interests, Inc. containing the appeals of the determinations of the Sarpy County Board of Equalization for Case Nos. 15C 181 and 15C 182 made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009) and postmarked August 27, 2015. A previous mailing of these two appeals had been postmarked August 20, 2015, but had been returned to sender (McGregor Interests, Inc.) due to insufficient postage.

The deadline for filing the appeal for tax year 2015 was on or before August 24, 2015, because the county had not adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁴ An appeal 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 Therefore, the Commission finds that the appeals in Case Nos. 15C 108 and 15C 109 were timely filed, but the appeals in Case Nos. 15C 181 and 15C 182 were not timely filed.

However, neither of the envelopes received by the Commission on August 25, 2015 or August 31, 2015, included a copy of the decision, order, determination, or action appealed from (the County Board Decision), or other information that documents the decision, order, determination, or action appealed from for any of the four appeals by the August 24, 2015 filing

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.).

deadline. A subsequent mailing to the Commission, postmarked October 9, 2015, included the County Board Decisions for each of the four appeals.

The Taxpayer argued that the filing requirement of Neb. Rev. Stat. §77-5013 to include the County Board Decision was satisfied by the inclusion of copies of the Property Valuation Protest, Form 422. The Form 422 in each case included the assessed value, the Taxpayer's requested value, and the Referee's recommendation, but included no record of the County Board Decision. The Taxpayer asserted that since the Referee's recommendation was adopted by the County Board in each case, inclusion of the Form 422 with each appeal should satisfy the jurisdictional requirement of Neb. Rev. Stat. §77-5013 to include the County Board Decision with the timely filing of an appeal. We disagree.

The County Board offered persuasive evidence that the Form 422 used for each protest proceeding should not be construed as evidence of the County Board Decision as is required under Neb. Rev. Stat. §77-5013. The Form 422, on its face, did not include any evidence or notice of the County Board Decision. The Referee's recommendation indicated on the Form 422 appears to be the result of the County Board exercising its statutory discretion to appoint a referee to conduct the protest hearing and make findings and a recommendation to the County Board.⁶ As such, the recommendation made by the Referee is just that, a recommendation, and it is not binding upon the County Board.⁷ The County Board "may make the order recommended by the referee or any other order in the judgment of [the County Board] required by the findings of the referee, or may hear additional testimony, or may set aside such findings and hear the protest anew."⁸ The evidence in these appeals is that the County Board agreed with the recommendations made by the Referee in each protest, and then issued a "Final Determination," which included both the "Referee's Recommendation" as well as the "Board's FINAL Determination."⁹ We find that the requirement of Neb. Rev. Stat. §77-5013 was not satisfied when the envelope containing the appeal forms also included copies of the Form 422, which made no reference to the County Board Decision, but did not include copies of the County Board's "Final Determination."

⁶ See Neb. Rev. Stat. §77-1502.01 (Reissue 2009).

⁷ *Id.*

⁸ *Id.*

⁹ Exhibit 1:2-5.

“Jurisdiction is the inherent power or authority to decide a case.”¹⁰ The Commission only has that “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.¹¹ The requirements of Neb. Rev. Stat. §77-5013 are jurisdictional. Since no copy of a County Board Decision was received by the Commission by August 24, 2015, the Commission is not authorized to hear these appeals on their merits.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeals.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeals are dismissed with prejudice.
2. As required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the Sarpy County Treasurer, and the officer charged with preparing the tax list for Sarpy County as follows:

Dan Pittman
Sarpy County Assessor
1210 Golden Gate Drive #1200
Papillion, Nebraska 68046

Rich James
Sarpy County Treasurer
1210 Golden Gate Drive #1120
Papillion, Nebraska 68046

¹⁰ *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

¹¹ *See, e.g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

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

SIGNED AND SEALED February 25, 2016

Seal

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner