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

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| ORVILLE E. SCHMIDT,<br><br>Appellant,<br><br>vs.<br><br>DAWSON COUNTY BOARD OF EQUALIZATION,<br><br>Appellee. | ) | CASE NO. 00R-128<br><br>FINDINGS AND ORDERS DISMISSING APPEAL WITH PREJUDICE FOR WANT OF JURISDICTION |

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for a Show Cause Hearing by telephone conference call from the City of Lincoln, Lancaster County, Nebraska, on the 17th day of November, 2000, pursuant to an Order to Show Cause and a Notice of Hearing issued the 3rd day of November, 2000. The issue before the Commission is whether the Commission has jurisdiction over either the subject matter or the parties to this appeal.

Orville E. Schmidt("the Taxpayer") participated in the hearing by telephone. The Dawson County Board of Equalization ("the County") participated in the hearing by telephone through Kurt McBride, Deputy Dawson County Attorney. The Commission took notice of certain information as authorized by Neb. Rev. Stat. §77-5016(5) during the course of the hearing. The Commission also afforded each of the parties the opportunity to present evidence and argument as to the issue of jurisdiction.

Neb. Rev. Stat. §77-5018 (2000 Cum. Supp.), requires that every final decision and order entered by the Commission which is

adverse to a party be stated in writing or on the record and be accompanied by findings of fact and conclusions of law. The Commission adopts the following Findings of Fact and Conclusions of Law in compliance with that mandate:

## I.
## FINDINGS OF FACT

1. That the Taxpayer is the owner of record of certain residential property located in Dawson County, Nebraska.
2. That the Dawson County Assessor ("the Assessor") proposed valuing the subject property in the amount of $94,346 for purposes of taxation as of January 1, 2000 ("the assessment date"). (Form 422).
3. That the Taxpayer timely filed a protest of the proposed valuation, and requested that the subject property be valued in the amount of $79,000. (Form 422).
4. That the protest alleged that "I purchased it for $79,000; It is only a Two Bedroom; It is over 30 years old; Appliances, Plumbing Fixtures, and cabinets are construction period dated." (Form 422).
5. That the County granted the protest in part and reduced the assessed value to $87,500. (Form 422).
6. That Neb. Rev. Stat. §77-1510 (2000 Cum. Supp.) provides that:

> "Appeals may be taken from any action of the

county board of equalization to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act. The appeal shall be filed within thirty days after adjournment of the Board which, for actions taken pursuant to section 77-1502, shall be deemed to be July 25 of the year in which the action is taken."

7. That there are 31 days in the month of July. That therefore the filing deadline for appeals taken pursuant to Neb. Rev. Stat. §77-1510 (2000 Cum. Supp.) was August 24, 2000.

8. That Taxpayer did not file an appeal with the Commission on or before August 24, 2000.

9. That the Taxpayer signed the Appeal Form on August 30, 2000. (Appeal Form.)

10. That the Taxpayer's appeal was filed on September 1, 2000.

11. That Taxpayer urges the Commission to exercise its equitable jurisdiction (see Neb. Rev. Stat. §77-1511 (Reissue 1996)) and take jurisdiction of the appeal on two grounds: (1) the Taxpayer was unaware of his right to appeal; and (2) the Taxpayer had tried to speak with the County Assessor on two occasions when the Assessor was not available.

12. That the Taxpayer testified that he had received notice of

the valuation change on July 31, 2000.

13. That the Taxpayer alleged that he had not been aware of the right to appeal this valuation until reading the *Omaha World Herald* on August 29,2000.

14. That the Form 422 notifies the Taxpayer of the filing deadline with the Commission.

15. That the Appeal Form notifies the Taxpayer that appeals to the Commission must be filed within 30-days of July 25.

16. That therefore Taxpayer had actual, personal notice of the filing deadline.

17. That under these circumstances, there is no basis for the Commission to exercise any equitable authority.

18. That the Taxpayer was notified by the Commission that the appeal was untimely filed, and that the appeal and filing fee could be returned to the Taxpayer. That the Taxpayer was advised that, once the appeal was filed, the filing fee could not be refunded. That the Taxpayer requested that the appeal be filed.

19. That the parties were afforded the opportunity to present evidence and argument regarding the question of jurisdiction, as required by Neb. Rev. Stat. §77-5015 (Reissue 1996).

20. That Taxpayers, from the record before the Commission, did not timely file an appeal of the decision of the County.

Neb. Rev. Stat. §77-1510 (2000 Cum. Supp.).

21. That from the record before it, the Commission has no subject matter jurisdiction over the decision of the Dawson County Board of Equalization as to the assessed value of the subject property for tax year 2000.

## II.
## CONCLUSIONS OF LAW

1. That the Nebraska Supreme Court has held that "Jurisdiction is the inherent power or authority to decide a case. . . " *Wickersham v. State*, 218 Neb. 175, 183, 354 N.W.2d 134, 140 (1984).

2. That therefore the Commission only has that "authority" specifically conferred upon it by the Constitution of the State of Nebraska, Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act. *Arcadian Fertilizer, L. P. v. Sarpy Cty. Bd. Of Equal.*, 7 Neb. App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998).

3. That the statutory jurisdiction of the Nebraska Tax Equalization and Review Commission is generally set forth in Neb. Rev. Stat. §77-5007 (2000 Cum. Supp).

4. That "The fact is that lack of jurisdiction may exist even where the parties submit an issue to an administrative agency in the mistaken belief that the agency has statutory

authority to resolve it. The parties' understanding or intentions are irrelevant to the issue . . . since the parties cannot confer subject matter jurisdiction upon a tribunal by either consent or acquiescence." *Arcadian Fertilizer, L. P. v. Sarpy Cty. Bd. Of Equal.*, 7 Neb. App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998).

5. That the language in Neb. Rev. Stat. §77-1510 (1998 Cum. Supp.) specifies that "The appeal *shall* be filed within thirty days. . . " That the Nebraska Supreme Court has held "We have held that as a general rule, in the construction of statutes, the word 'shall' is considered mandatory. . ." *State v. One Thousand Nine Hundred Forty-Seven Dollars in U.S. Currency*, , 255 Neb. 290, 297, 583 N.W.2d 611, 617 (1998).

6. That the Nebraska Supreme Court has determined that in the case of filing deadlines " . . . time limits are jurisdictional. Failure to appeal within the statutory requirements removes the jurisdiction of the case from the court." *Application of Jantzen,* 245 Neb. 81, 96, 511 N.W.2d 504, 515 (1994).

7. That the Commission concludes as a matter of law that it has no subject matter jurisdiction over this appeal which was untimely filed.

8. That therefore the appeal must be dismissed with prejudice as a matter of law.

**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

1. That this appeal is dismissed with prejudice.

2. That this decision, if no appeal is filed, shall be certified within thirty days to the Dawson County Treasurer, and the Dawson County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

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

**IT IS SO ORDERED.**

Dated this 7th of December, 2000.

*Janet L. Edwards*, Commissioner

*Robert L. Hans*, Commissioner

*Mark P. Reynolds*, Chairman