

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

ROBERT J. HILKEMANN
Appellant,

v.

Douglas County Board of Equalization
Appellee.

Case No: 11R-471

**ORDER FOR DISMISSAL WITH
PREJUDICE**

Heard before 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 January 9, 2012. John M. Heida, Attorney for the Appellant (the “Taxpayer”), appeared telephonically. Thomas Barrett, an Assistant Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the “County Board”). The Commission took notice of its case files for the purpose of evidence in support of personal and subject matter jurisdiction. The Commission heard testimony by the parties and took the matter under advisement.

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. ANALYSIS

The Taxpayer purchased the Subject Property on September 3, 2010 for \$450,000. The Taxpayer protested his 2010 assessed valuation referenced above at the same time he protested his 2011 assessed valuation. The Taxpayer's Appeal document states as follows: "This appeal is from the Board's non-consideration of Owner's 2010 valuation. Owner purchased the property for less than the 2010 valuation after the Board met in 2010, denying him the opportunity to protest the 2010 valuation the same year." The Commission notes that the Taxpayer perfected an appeal with respect to the Subject Property for tax year 2011. That appeal is numbered 11R-472.

The Taxpayer asserts that Nebraska Statutes sections 77-1502 and 77-1504 are inconsistent in a manner that supports the Commission's jurisdiction to hear his 2010 appeal. In this regard, the Taxpayer argues that section 77-1502 (governs real property protests before county boards of equalization) is not limited to a consideration of his 2011 assessed valuation, for the reason that this statute does not contain language limiting consideration to the "current assessment year" as does section 77-1504 (the latter statute governs equalization duties of county boards of equalization). In other words, because section 77-1502 does not contain "current assessment year" language as does section 77-504, the Taxpayer asserts that by inference the County Board could have considered his 2010 assessed valuation, notwithstanding the fact that it was filed several months after the protest deadline of June 30, 2010.

The Commission does not find the Taxpayer's argument persuasive. Nebraska Statutes section 77-1502 required the filing of a protest for the Subject Property with the County Board by June 30, 2010.⁴ The Taxpayer does not dispute that a protest in connection with the 2010 assessed valuation of the Subject Property was not filed with the County Board by June 30, 2010.

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

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 (2012 Cum. Supp.).

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

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 did not file a protest with the County Board for the 2010 tax year by June 30, 2010, the County Board did not have jurisdiction to hear the protest, and it follows that the Commission does not have jurisdiction.

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 Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Roger Morrissey
1819 Farnam Street Rm. 400
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
Omaha, NE 68183

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

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

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

4. This order is effective for purposes of appeal on July 10, 2013.

SIGNED AND SEALED July 10, 2013.

SEAL

Thomas D. Freimuth, Commissioner

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.