

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

First Church of God
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case No: 16E 0010

**ORDER VACATING DECISION OF
COUNTY BOARD AND COUNTY
ASSESSOR**

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

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held before the Tax Equalization and Review Commission (Commission) on June 21, 2016. First Church of God (Taxpayer) appeared telephonically at the hearing through Board Member Clarence Crader. Shakil Malik, Deputy 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 determining personal and subject matter jurisdiction. The Commission received evidence and heard argument regarding its jurisdiction to hear this appeal.

II. STANDARD OF REVIEW

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 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.²

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

² *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

III. ANALYSIS

The Subject Property in this appeal is a parcel in Douglas County. On March 21, 2016, the Commission received an envelope that contained an Appeal to the Nebraska Tax Equalization and Review Commission form (Appeal Form) and a filing fee. (Case File). The envelope was postmarked on March 18, 2016, and also contained a property tax statement, an attachment indicating that the Subject Property had been placed back on the property tax rolls, and a letter from the Douglas County Board of Equalization indicating that the value of the property for 2015 was as stated on the record of the December 8, 2015, board of equalization meeting. (Case File). The Commission was unable to determine the decision being appealed by the Taxpayer based on the information submitted with the Appeal Form. Therefore, the Commission was unable to determine the date specified by law for filing the appeal. The Commission set this matter for a show cause hearing to determine jurisdiction in this appeal.

The Subject Property was previously tax exempt. Any organization seeking a tax exemption for real property, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought.³ For the tax year 2015, the Taxpayer did not submit an application for property tax exemption by December 31, 2014.

If an organization fails to file an exemption application by December 31, an application may be submitted on or before June 30 to the county assessor along with a written waiver request with the county board of equalization.⁴ The Taxpayer did not submit an application to the county assessor or make application for a waiver. Therefore the Subject Property did not qualify for tax exemption in 2015.

On September 9, 2015, The Douglas County Assessor (Assessor) changed the value of the Subject Property from \$0 to \$500,700.⁵ On October 6, 2015, the Assessor appears to have sent notice to the Taxpayer of this change in the form of a document entitled “Certified Assessment Correction.”⁶ It is unclear when this document was sent to the Taxpayer. The return receipt offered into evidence shows a date of either October 1, 2015 or December 1, 2015.⁷ The County

³ See, Neb. Rev. Stat. §77-202.01(1) (Reissue 2009).

⁴ Neb. Rev. Stat. §77-202.01 (2) (Reissue 2009).

⁵ Exhibit 4:4

⁶ Exhibit 4:2

⁷ Exhibit 4:3

Board approved the change in value as a “Certified Assessment Correction reflecting omitted or undervalued property” on October 27, 2015.⁸ The Taxpayer protested that decision to the County Board, and on December 8, 2015, the County Board upheld the recommended value of the Assessor.

The action of the county board of equalization may be appealed to the Commission within 30 days after the final decision.⁹ The Taxpayer’s appeal was filed more than 30 days from the date of decision. The Taxpayer alleged that it did not receive notice of the December 8, 2015, decision of the County Board until February 10, 2016. The testimony offered on behalf of the Taxpayer was unclear about which notices were received by the Taxpayer. Although the record is unclear on these issues, it is clear from the record that the Assessor changed the value of the Subject Property on September 9, 2015 and the County Board adopted that change in value on October 27, 2015. If real property is assessed at a different value than the previous year, the county assessor must give notice to the owner on or before June 1.¹⁰

State law also limits the situations that a county board of equalization can change the value of real property. Property that is overvalued or undervalued must be reported by the county assessor after March 19 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests.¹¹ The County Board did not act within this timeframe in the above-captioned appeal.

The county assessor also has a duty to report omitted property to the county board of equalization.¹² However, omitted property does not include tax exempt property under Neb. Rev. Stat. §77-202(1)(d).¹³ In addition, the Subject Property was not omitted property, it was on the county’s tax rolls but simply valued at \$0. Therefore, the County Board could not lawfully act under this provision.

⁸ Exhibit 5:1

⁹ Neb. Rev. Stat. §77-1507(3) (2014 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-1315(2) (2014 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-1315.01 (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-1317 (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-123 (2014 Cum. Supp.).

The county board of equalization can also meet at any time for the correction of clerical errors that result in a change of value.¹⁴ Clerical errors are specifically defined in statute and include the transposition of numbers, mathematical errors, and other situations not applicable to the Subject Property.¹⁵ Therefore, the County Board could not lawfully act under this provision.

The Nebraska Supreme Court has consistently held that the actions of a county board that acts without notice or acts without statutory authority should be voided. In *Rosenberry v. Douglas County*, the Nebraska Supreme Court held that a county assessor did not have authority to increase the assessed value of a property unless the taxpayer received appropriate notice.¹⁶ The Court reasoned that it was mandatory under the applicable Nebraska Statute that a county assessor or county board of equalization provides notice of an increased assessment of property taxes to the taxpayer. Similarly, in *Gamboni v. County of Otoe*, the Nebraska Supreme Court held that where a county assessor provides notice of a valuation increase, but does not include all of the requisite information, then the increased valuation is void.¹⁷

In *Falotico v. Grant County Board of Equalization*, the Grant County Board of Equalization failed to send notice of its determination within 7 days as required by statute¹⁸. The taxpayer filed his appeal to the Commission late and the Nebraska Supreme Court determined that the Commission did not have jurisdiction. The increased assessment was held void because the taxpayer did not have an effective path for appealing the merits of the determination.

In *Darnall Ranch, Inc., v. Banner County Board of Equalization*, the Nebraska Supreme Court held that the Banner County Board of Equalization had violated the Open Meeting Acts concerning the taxpayer's petition to the county board of equalization¹⁹. The Court reasoned that because the taxpayer no longer had an avenue of appeal available the increased assessment was void.

As the above cases show, the Nebraska Supreme Court and Court of Appeals have determined that the appropriate remedy is to void the county's assessment when there is a failure

¹⁴ Neb. Rev. Stat. §77-1507(1) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-128 (Reissue 2009).

¹⁶ 123 Neb. 803, 244 N.W. 398 (1932)

¹⁷ 159 Neb. 417, 67 N.W.2d 489 (1954) disapproved on other grounds

¹⁸ 262 Neb. 292, 631 N.W.2d 492 (2001)

¹⁹ 280 Neb. 655, 789 N.W.2d 26 (2010)

to follow a mandatory provision of statute. This includes a failure to provide appropriate notice of a county board determination or an increase in assessed value by a county assessor. The courts concluded that because the taxpayer had lost its access to review, the increased assessment was void.

Similarly, in the present case, the Assessor and the County Board acted without statutory authority in raising the value of the Subject Property after the failure to apply for a property tax exemption. Since the County Board and County Assessor acted unlawfully, the act of changing the Subject Property's value is void.

IV. CONCLUSION

Because the County Board and County Assessor acted unlawfully, the act of changing the Subject Property's value is void.

ORDER

IT IS THEREFORE ORDERED THAT:

1. Actions of the Douglas County Assessor and Douglas County Board of Equalization increasing the assessed value of the Subject Property from \$0 for tax year 2015 are void.
2. The decisions of the Douglas County Assessor and Douglas County Board of Equalization are vacated and reversed.
3. 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:

Diane Battiato
Douglas County Assesor/Register of Deeds
1819 Farnam Stre. Ste H09 Civic Center
Omaha, NE 68183-1000

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

as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

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

SIGNED AND SEALED August 31, 2016

Seal

Steven A. Keetle, Commissioner

Nancy J. Salmon, Commissioner