

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

EMIL LAVERN OSEKA, )  
)  
Appellant, ) Case No. 97AH-2  
)  
v. )  
)  
AREA 4 AGRICULTURAL AND ) FINDINGS AND ORDERS  
HORTICULTURAL LAND )  
VALUATION BOARD, )  
)  
Appellee. )

Filed May 13, 1997

Before: Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

APPEARANCES:

For the Appellant: Emil Lavern Oseka  
P. O. Box 108  
Loup City, Nebraska 68853

For the Appellee: B. J. Meyer  
Chairman, Area 4 AHLVB  
P.O. Box 325  
Spalding, NE 68665

Mark Eureka  
Sherman County Attorney  
P.O. Box 621  
Loup City, NE 68853-0621

SUMMARY OF DECISION

Appellee filed a Demurrer alleging that the appeal was filed out of time. The Commission finds that the Appellant failed to timely file his appeal. Appellant's

appeal is therefore dismissed for failure to comply with the provisions of 1997 Neb. Laws, L.B. 397, Section 21.

### NATURE OF THE CASE

Emil Lavern Oseka (Appellant) filed an appeal challenging a decision of the Area 4 Agricultural and Horticultural Land Valuation Board (Board). The Board met on April 7, 1997, and took no action regarding agricultural and horticultural land valuations within the land manual area. Appellant filed an appeal, alleging that "a minimum of three levels should be establish (sic) for the four counties Valey, Sherman, Greely & Howard Counties." The appeal form was dated April 17, 1997. The postmark on the envelope in which the appeal was filed was dated April 1, 1997. Appellee filed a Demurrer, alleging that the appeal was filed out of time.

### DUTIES OF THE PARTIES

The duties of the Board are set forth in 1997 Neb. Laws, L. B. 397, Section 19:

"Section 77-1381, Reissue Revised Statutes of Nebraska, is amended to read:

"77-1381. Each board may:

. . . After April 1 and on or before April 15 of each year, (a) increase or decrease by percentage the value of a class or subclass of agricultural and horticultural land in any county in its land manual area in order to establish equalization of value between the various counties in its land manual area effectivefor that year, (b) make necessary changes in classification of agriclutural and horticultural land within its land manual area if the evidence discloses incorrect classification, . . ."

Appellant's duties are set forth in 1997 Neb. Laws, L.B. 397. That law, in Section 21, states:

"Section 77-1384, Reissue Revised Statutes of Nebraska, is amended to read:

77-1384. Any affected person may appeal an action of a board increasing or decreasing value or reclassifying land within the county to the Tax Equalization and Review Commission. The commission shall hold a hearing and shall enter its order on or before May 15. All appeals shall be filed within fifteen days after the action by the board by mailing notice to the board setting forth the order from the appeal is being taken, the date of the order, and a summary of the reason for the appeal."

### FACTS

The Notice of the Board's action states in applicable part:

"On April 7, 1997, the Area Four Central AG Land Valuation Board met to establish equalization of value between the counties within the land manual area comprises of Sherman, Valley, Greeley, Howard, Hall, Buffalo, Dawson and Custer Counties. The County Assessor's (sic) valuations all fell in the acceptable percentage range according to LB 397. It was moved and seconded and motion carried (sic) to approve the 1997 land values with no changes as presented to this Board."

The appeal was dated April 17, 1997. The envelope in which the appeal was filed was dated April 1, 1997. The Postmaster of the Post Office at which the appeal was mailed stated that the date stamp which was used to "cancel" the envelope was inadvertently not changed to show "May" until May 3. The envelope was received and processed by the Post Office on May 1, 1997.

### STANDARD OF REVIEW

The burden of proof shall be on the party appealing the order to establish that the order by the board is unlawful, arbitrary, or capricious. 1997 Neb. Laws, L.B. 397, Section 21.

The commission shall hold a hearing and shall enter its order on or before May 15, 1997 Neb. Laws, L. B. 397, Section 21.

### FINDINGS OF FACT

From the record before it the Commission finds and determines as follows:

- I. The deadline for filing an appeal of the Area 4 Agricultural and Horticultural Land Valuation Board was April 24, 1997.
- II. The appeal was mailed May 1.
- III. The appeal was filed out of time.

### JURISDICTION

The jurisdiction of the Commission is set forth in 1997 Neb. Laws, L. B. 397, Section 21.

### CONCLUSIONS OF LAW

The Commission, based on the record before it, finds and concludes as a matter of law as follows:

- I. That Appellant failed to timely file his appeal as required by 1997 Neb. Laws, L.B. 397, Section 21.
- II. The Commission is without jurisdiction to consider the instant appeal.

### ORDER

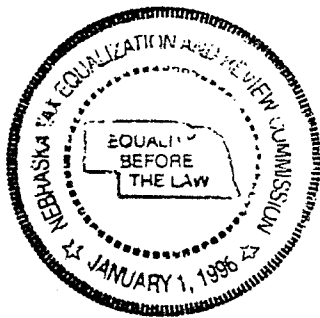
IT IS, THEREFORE, ORDERED AS FOLLOWS:

- I. That this appeal is dismissed.

- II. That this Order of the Commission shall be mailed to the Appellant and the Appellee.
- III. That this decision shall become final if no appeal is filed within thirty-days of the date of this decision.
- IV. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 13<sup>th</sup> day of May, 1997.



Seal

*[Handwritten signature]*

Mark P. Reynolds, Chairman

*[Handwritten signature: Janet L. Edwards]*

Janet L. Edwards, Commissioner

*[Handwritten signature]*

Robert L. Hans, Commissioner