

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

RUDOLPH F. STOYSICH,)	
)	
Appellant,)	CASE NO. 03C-117
)	03C-118
vs.)	
)	
DOUGLAS COUNTY BOARD OF)	
EQUALIZATION,)	FINDINGS AND ORDER
)	
Appellee.)	

Filed 5 January 2004

Appearances:

For the Appellant: Kenneth J. Stoysich
4229 Dayton Street
Omaha, NE 68107

For the Appellee: James Thibodeau, Esq.
Deputy Douglas County Attorney
909 Civic Center
Omaha, NE 68183

Before: Commissioners Hans, Lore, Wickersham and Reynolds.

Reynolds, Chair, for the Commission:

**I.
STATEMENT OF THE CASE**

Rudolph F. Stoysich, owns two unimproved lots legally described as Lot 6, Block 5, Wilcox Addition, 47.5 x 156.5 and Lot 5, Block 5, Wilcox Addition, 47.5 x. 156.56, in the City of Omaha, Douglas County Nebraska. (Notice of Valuation Change Statements).

The Douglas County Assessor proposed valuing the subject properties in the amount of \$15,000 each. (Notice of Valuation Change Statements). The Taxpayer timely filed a protest of that

determination and requested that the proposed value be reduced. The Taxpayer's protest forms are not part of the record. The Douglas County Board of Equalization ("the Board") Denied the protest. (Certified County Board Records in Case File).

The Taxpayer filed an appeal form and the required filing fee for one of the two parcels by mail. The documents sent by the Taxpayer did not include a copy of the final decision appealed from or documentation of the final decision appealed from. The documents mailed by the Taxpayer were received by the Commission on August 22nd, 2003. The Commission notified Mr. Kenneth Stoysich of the jurisdictional requirement in writing on August 22, 2003. The missing documents and filing fee were received by the Commission on August 29, 2003. The postmark on the envelope is illegible and a second envelope showing that it had been returned to the Taxpayer for insufficient postage was enclosed.

The Commission issued an Order to Show Cause raising the jurisdictional issue on December 3, 2003. The Order and Notice of Hearing was served by certified mail to each of the Parties and set the hearing date for December 18, 2003. The Commission called the matter for hearing on December 18, 2003. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

Mr. Rudolph F. Stoysich, and his son Kenneth Stoysich, participated in the hearing by telephone conference call from Fremont, Nebraska. The Douglas County Board of Equalization appeared through James Thibodeau, Esq., the Deputy Dodge County Attorney. The County objected to the taxpayer being represented by Kenneth Stoysich.

II. ISSUES

The issues before the Commission are (1) whether the Taxpayer properly perfected his appeals, and (2) whether Kenneth Stoysich, Mr. Rudolph Stoysich's son, may properly represent his father in proceedings before the Commission.

III. APPLICABLE LAW

Nebraska State Law provides:

"(1) Any person appealing from a final decision under section 77-1510 or 77-5007 shall timely file the appeal with the commission. For purposes of this section, an appeal shall be deemed to be timely filed if the appeal is postmarked or received within thirty days after the date the final decision was rendered. (2) An appeal shall be perfected and the commission shall obtain jurisdiction when: (a) The appeal is filed on a form

provided by the commission; (b) A filing fee of twenty-five dollars is paid, except that no filing fee shall be required for a county assessor filing in his or her official capacity; and (c) A copy of the final decision or other information that documents such final decision is filed. (3) Except as provided in this section, no other requirement shall be deemed jurisdictional."

Neb. Rev. Stat. §77-5013 (2003 Supp.).

The deadline for county board of equalization action on Section §77-1502 protests is July 25 of each year unless that deadline is otherwise extended by law. Neb. Rev. Stat. §77-1502 (2003 Supp.). Appeals of those decisions must be filed within thirty days of that date. Neb. Rev. Stat. §77-5013(2003 Supp.). Appeals filed pursuant to Section 77-1502 must therefore be perfected on or before August 24 of each year, unless the deadline falls on a weekend. If the deadline falls on a weekend, the deadline is extended to next business day. Neb. Rev. Stat. §49-1202(Cum. Supp. 2002) .

Any appeal which is: (1) Transmitted through the United States mail; (2) mailed but not received by the state or political subdivision; (3) or received and the cancellation mark is illegible, erroneous or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes

by competent evidence that the appeal was deposited in the United States mail on or before the date for filing or paying. Neb. Rev. Stat. §49-1201 (Cum. Supp. 2002).

IV. FINDINGS OF FACT

The Commission finds and determines that:

1. The deadline for filing appeals by mail was Monday, August 25, 2003.
2. The Taxpayer failed to demonstrate that the missing documents were deposited in the United States mail on or before the filing deadline.

V. ANALYSIS

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

There is no presumption that the Commission has jurisdiction. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of*

Equal., 7 Neb. App. 499, 504 - 505, 583 N. W. 2D 353, 356 - 357 (1998). (Citations omitted). The Nebraska Supreme Court has ruled that a taxpayer must strictly comply with the time requirements of statute in order to confer subject matter jurisdiction on the Commission. *Creighton St. Joseph Regional Hospital v. Tax Equalization and Review Commission*, 260 Neb. 905, 916, 620 N.W.2d 90, 99 (2000).

The Commission has no authority to extend the filing deadline set forth in law for any reason. *Id.* The Taxpayer's appeal was filed out of time. The Commission therefore lacks subject matter jurisdiction, and the appeal must be dismissed as a matter of law.

VI. CONCLUSIONS OF LAW

1. The Commission lacks jurisdiction over the Parties and further lacks jurisdiction over the subject matter of these appeals.
2. The Commission, in the absence of jurisdiction, must dismiss a pending appeal as a matter of law. *See, e.g., Jacobson v. Jacobson*, 10 Neb.App. 622, 624, 635 N.W.2d 272, 275 (2001).
3. Where a jurisdictional defect cannot be cured, an order dismissing the action should be entered with prejudice.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. These appeals are hereby dismissed with prejudice.
2. The Douglas County Board of Equalization's decision in Case No. 03C-117 is therefore final, and the Taxpayer's real property legally described as Lot 6, Block 5, Wilcox Addition, 47.5 x 156.5, in Douglas County, Nebraska, shall be valued as follows for tax year 2003, as determined by the Board:

Land	\$15,000
Improvements	\$ -0-
Total	\$15,000

3. The Douglas County Board of Equalization's decision in Case No. 03C-117 is therefore final, and the Taxpayer's real property legally described as Lot 5, Block 5, Wilcox Addition, 47.5 x 156.5, in Douglas County, Nebraska, shall be valued as follows for tax year 2003, as determined by the Board:

Land	\$15,000
Improvements	\$ -0-
Total	\$15,000

4. The County's objection Mr. Kenneth Stoysich's representation of his father in proceedings before the Commission is denied as moot.

5. Any request for relief by any Party not specifically granted by this Order is denied.
6. This decision, if no appeal is filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (2003 Supp.).
7. This decision shall only be applicable to tax year 2003.
8. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 5th day of January, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

Seal

Wm. R. Wickersham, Chair