

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

SANDRA L. PAVEL,)	
)	
Appellant,)	CASE NO. 06R-489
)	
vs.)	FINDINGS AND ORDER DISMISSING
)	APPEAL FOR WANT OF JURISDICTION
DOUGLAS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing pursuant to an Order to Show Cause entered by the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on November 21, 2006, pursuant to an Order to Show Cause and Notice of Hearing (Jurisdiction Untimely filing) issued November 7, 2006. Commissioners Wickersham, Warnes, and Hans were present. Commissioner Wickersham presided at the hearing.

Sandra L. Pavel ("the Taxpayer") appeared through David E. Pavel, her legal counsel, by teleconference. The Douglas County Board of Equalization ("the County Board") appeared, by teleconference, through legal counsel, Mr. James R. Thibodeau a Deputy County Attorney, for Douglas County, Nebraska. The Commission took statutory notice, heard argument and allowed for filing of briefs.

The Commission is required by Neb. Rev. Stat. §77-5018 (Reissue 2003) to state its final decision, with findings of fact and law, on the record or in writing.

**I.
FINDINGS**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described in the appeal as Lot 2, Block 5, West Highlands Addition, Omaha, Douglas County Nebraska (“the subject property”).
2. The Taxpayer’s appeal was received by the Commission on September 1, 2006. (Case File)
3. The postmark on the mailing of the appeal was August 31, 2006. (Case File).
4. An Order to Show Cause and Notice of Hearing (Jurisdiction Untimely Filing) was issued by the Commission on November 7, 2006, directing the Taxpayer to show why the appeal should not be dismissed for want of jurisdiction.
5. The County Board stipulated that: the Taxpayer had filed a timely protest, the County Board did not act on the Taxpayer’s protest, and no notice of County Board action was mailed to the Taxpayer or her attorney.

**II.
APPLICABLE LAW**

1. The Commission, while making a decision, may not consider testimony, records, documents or other evidence which is not a part of the hearing record except those identified in the Commissions rules and regulations or Neb. Rev. Stat. §77-5016(3) (Supp 2005).

2. 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. *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).
3. The Commission obtains jurisdiction over an appeal when the appeal, 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 and the filing fee is timely received and thereafter paid. Neb. Rev. Stat. §77-77-5013 (Cum. Supp 2004).
4. Appeals from County Board of Equalization decisions made pursuant to section 77-1502 must be filed on or before August 24 of each year. Neb. Rev. Stat. 77-1510 (Cum. Supp. 2004).
5. An appeal is timely filed if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission on or before the filing deadline. Neb. Rev. Stat. §77-5013 (Cum. Supp. 2004).
6. Any person otherwise having the right to file an appeal with the Commission may petition the Commission for a determination of actual value of real property if a failure to give notice prevented timely filing of an appeal provided for in sections 77-1501 to 77-1507. Neb. Rev. Stat. 77-1507.01 (Supp 2005).
7. Petitions pursuant to section 77-1507.01 must be filed on or before December 31 of each year. Neb. Rev. Stat. 77-1507.01 (Supp 2005).

8. A County Board is required to act on a protest filed pursuant to section 77-1502 of Nebraska Statutes on or before July 25 of each year. Neb. Rev. Stat. 77-1502 (Supp 2005).
9. The county clerk is required to mail notice to the protestor of a County Board's decision on a protest filed pursuant to section 77-1502. Neb. Rev. Stat. 77-1502 (Supp 2005).
10. Failure of a County Board to act with a required time frame constitutes a denial of the protest. *Sumner v. Colfax County*, 14 Neb. 524, 16 N.W. 756 (1883).

III. ANALYSIS

The issue presented in this proceeding is whether or not the Commission has jurisdiction to hear the appeal of the Taxpayer when the appeal was not timely filed by the Taxpayer. The Taxpayer seeks to excuse late filing of her appeal with proof that the County Board did not act on her protest and did not mail notice of its action to her as required by law. The failure of County Board or other county official does not allow for an exception to the provisions of section 77-1510 or 77-1503 of the Nebraska Statutes. *Felatico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492, (2001).

Regardless of its caption the appeal filed by the Taxpayer contains allegations sufficient for it to be considered a "petition" filed pursuant to section 77-1507.01 of the Nebraska Statutes. An appeal of a decision on protest filed pursuant to section 77-1502 of Nebraska Statutes must be made in accordance with section 77-1510 of Nebraska Statutes. Neb. Rev. Stat. 77-1510 (Cum.

Supp. (2004). Section 77-1507.01 by its plain terms is not however applicable to an appeal pursuant to section 77-1510 of Nebraska Statutes and a petition on that basis must be dismissed.

**IV.
CONCLUSIONS OF LAW**

1. The Commission does not have jurisdiction.

**V.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Appeal of Sandra L. Pavel concerning the taxable valuation of Lot 2, Block 5, West Highlands Addition, Omaha, Douglas County Nebraska is dismissed for want of jurisdiction.
2. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2003).
3. Each party is to bear its own costs in this matter.
4. This decision shall only be applicable to tax year 2006.

IT IS SO ORDERED.

Dated December 18, 2006.



SEAL


Wm. R. Wickersham, Commissioner


Robert L. Hans, Commissioner


William C. Warnes, Commissioner

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LW IN NEBRASKA REVISED STATUTE §77-5019 (Supp. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.