

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

GLOBAL COUNTRY OF WORLD PEACE,)	
)	
Appellant,)	Case No 05E-007
)	
v.)	DECISION AND ORDER AFFIRMING THE DECISION OF THE SEWARD COUNTY BOARD OF EQUALIZATION
)	
SEWARD COUNTY BOARD OF EQUALIZATION,)	
)	DISMISSAL FOR WANT OF JURISDICTION
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Global Country of World Peace to 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 August 8, 2006, pursuant to a Notice and Order for Hearing issued June 9, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Eric L. Michener, an area director and full time employee of Global Country of World Peace ("the Taxpayer"), was present without legal counsel.

The Seward County Board of Equalization ("the County Board") appeared through legal counsel, Jennifer Stehlik Ladman, a Deputy County Attorney for Seward County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The County Board moved for dismissal because the Commission lacked subject matter jurisdiction.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

I. FINDINGS

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as 10.31 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, Township 10, Range 4, Seward County, Nebraska, ("the subject property").
2. The Taxpayer acquired the subject property on August 26, 2005, and recorded its deed on September 20, 2005 . (E7).
3. The Taxpayer did not file an application for exemption prior to December 1, 2005.
4. The County Board determined on December 23, 2005, that the subject property was taxable property.
5. The Taxpayer filed an appeal of the County Board's decision to the Commission on January 20, 2006.
6. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
7. An Order for Hearing and Notice of Hearing issued on June 9, 2006, set a hearing of the Taxpayer's appeal for August 8, 2006, at 1:00 p.m. CDST.
8. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.

II. APPLICABLE LAW

1. Nebraska's Constitution authorizes an exemption only for educational, religious, charitable or cemetery purposes, and only when the property is neither owned nor used for financial gain or profit to either the owner or user. *Art. VIII, Nebraska Constitution*, §2(2).
2. The Constitutional provision is not self executing and requires Legislative action for implementation. *Indian Hill Community Church v. County Board of Lancaster County*, 226 Neb. 510, 412 N.W.2d 459, (1987).
3. State law provides a five-part test for determining exemption eligibility. Real property is exempt only when (1) the property is owned by an educational, religious, charitable or cemetery organization; (2) the property is used exclusively for educational, religious, charitable or cemetery purposes; (3) the property is not owned or used for financial gain or profit to either the owner or user; (4) the property is not used for the sale of alcoholic liquors for more than twenty hours per week; and (5) the property is not owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. Neb. Rev. Stat. §77-202(1)(d)(Reissue 2003).
4. An organization described in section 77-202(1)(d) which acquires exempt property after August 1 and before the levy date if it wishes to have the exemption continued is required to file an application as provided in section 77-202.01 on or before December

1. The county board of equalization is required to review the application by December 15. Neb. Rev. Stat. §77-202.03 (Cum. Supp. 2004).
5. An exemption can only be obtained after compliance with procedural requirements stated in Nebraska Statutes. *Indian Hill Community Church v. County Board of Lancaster County*, 226 Neb. 510, 412 N.W.2d 459, (1987).
6. An exemption is never presumed. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).
7. The property which is claimed as exempt must clearly come within the provision granting the exemption. *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).
8. The laws governing property tax exemptions must be strictly construed. *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d 543, 547 (1993).
9. “The parties' understanding or intentions are irrelevant to the issue of whether the Commission had jurisdiction, since the parties cannot confer subject matter jurisdiction upon a tribunal by either consent or acquiescence. (Citation omitted.) There is, accordingly, no ‘presumption’ that the Commission had jurisdiction.” *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 504 - 505, 583 N.W. 353, 356 - 357 (1998)(Citations omitted).
10. “The absence of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte.” *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746,

752, 635 N.W.2d 112, 118 (2001), citing *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000).

11. Statutes conferring powers upon a county board of equalization are to be strictly construed, and the procedure therein pointed out must be followed. *Peterson v. Brunzell, County Treasurer*, 103 Neb. 250, 170 N.W.2d 905 (1919).
12. The Commission cannot acquire jurisdiction over an issue if the county board of equalization had no jurisdiction of the subject matter. *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).
13. The Commission has jurisdiction over the parties to this appeal.

III. CONCLUSIONS OF LAW

The Commission lacks subject matter jurisdiction.

IV. DISCUSSION

The requirements of statute are clear. An application for exemption must be filed prior to December 1 if exempt property is acquired by an exempt organization after August 1. Neb. Rev. Stat. §77-202.03 (Cum. Supp. 2004). An exemption application was not filed prior to December 1, by the Taxpayer after it acquired the subject property on August 26, 2005. Since no application had been filed the County Board it did not have jurisdiction. If the County Board lacked jurisdiction the Commission cannot have subject matter jurisdiction on appeal. *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

The Commission does not have subject matter jurisdiction and the Taxpayer's appeal should be dismissed.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The motion of the County Board for dismissal because the Commission lacked jurisdiction is granted.
2. The above captioned appeal is dismissed.
3. This decision, if no appeal is timely filed, shall be certified to the Seward County Treasurer, and the Seward County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2005.
7. This order is effective for purposes of appeal August 10, 2006.

Signed and Sealed. August 10, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

SEAL

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 LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.