

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

BRUCE G. KUTSCHARA,)	
)	
Appellant,)	Case No. 10A 395
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DAWES COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Jurisdiction)
)	
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Jurisdiction) why the appeal by Bruce G. Kutschara ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission") should not be dismissed. The hearing was held in the Best Western, 1100 W. 10th Street, Chadron, Dawes County, Nebraska, on May 31, 2011, pursuant to an Order to Show Cause (Jurisdiction) issued May 23, 2011. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the proceeding. Commissioner Hotz was excused. Commissioner Salmon was present. The proceeding was heard by a quorum of a panel of the Commission.

Bruce G. Kutschara was present at the hearing. Lisa Adams appeared as legal counsel for the Taxpayer.

J. Adam Edmund, and Joe W. Stecher, Deputy County Attorneys for Dawes County, Nebraska, were present as legal counsel for the Dawes County Board of Equalization ("the County Board").

The Commission took statutory notice and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Reissue 2009). The final decision and order of the Commission is as follows.

I. ISSUES

Whether the appeal should be dismissed because the County Board did not have jurisdiction.

II. FINDINGS OF FACT

The Commission finds and determines that:

1. The protest filed with the County Board did not contain or have attached to it a statement of the reason or reasons for the protest.

III. APPLICABLE LAW

1. The Commission does not have jurisdiction to hear an appeal if: the Dawes County Board of Equalization lacked jurisdiction. *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).
2. "If the protest does not contain or have attached the statement or the reason or reasons for the protest or the description of the property, the protest should be dismissed by the

County Board of Equalization." Neb. Rev. Stat §17-1502 (2) (Reissued 2009).

4. "Administrative bodies have only that authority specifically conferred upon them by statutes or by construction necessary to achieve the purpose of the relevant act." *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).
5. Parties cannot confer subject matter jurisdiction on the Commission by either acquiescence or consent. *See, e.g., Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

IV. ANALYSIS

The Taxpayer testified that a mistake had been made when the protest was filed with the County Board, and acknowledged that a statement of a reason or reasons why the protest was filed was not contained in the protest or attached to it. The provisions of section 77-1502 of Nebraska Statutes mandate dismissal of a protest by a county board of equalization if a statement of a reason or reasons is not contained in the protest or are attached to it. Because the provision is mandatory, the County Board did not have jurisdiction to hear the protest. If the County Board did not have jurisdiction, the Commission cannot have jurisdiction and the appeal must be dismissed.

V. CONCLUSIONS OF LAW

1. The Commission does not have subject matter jurisdiction in this appeal.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The appeal in Case No. 10A 395 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed June 15, 2011.

Nancy J. Salmon, Commissioner

Wm. R. Wickersham, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.