

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cargill Meat Solutions Corporation,
Appellant,

v.

Colfax County Board of Equalization,
Appellee.

Case No: 13P 007

**DECISION AND ORDER VACATING
AND REVERSING THE DECISION OF
THE COUNTY BOARD**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on March 3, 2014. Timothy L. Moll appeared telephonically at the hearing before the Tax Equalization and Review Commission (the Commission) as legal counsel for Cargill Meat Solutions Corporation (the Taxpayer). Edmond E. Talbot III, Special Appointed County Attorney, appeared telephonically on behalf of the Colfax County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

II. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and 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.¹ If the body from which an appeal was taken lacked jurisdiction then the appellate tribunal acquires no jurisdiction.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.³ The

¹ See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

² See, *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, 815 N.W.2d 168, 175 (2012)

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

purpose of the show cause hearing is to allow parties to present sufficient evidence as to why the Commission would have jurisdiction over an appeal.⁴

III. ANALYSIS

On December 23, 2013, the Commission received an envelope containing an appeal of a November 26, 2013, determination of the Colfax County Board of Equalization purporting to have been made pursuant to Neb. Rev. Stat. §77-1507 (2012 Cum. Supp.).⁵ The deadline for filing appeals of these determinations is within 30 days after the County Board's decision.⁶ An appeal to the Commission is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission, or received by the Commission on or before the date specified by law for filing the appeal.⁷ The Appellant alleges in its appeal that the County Board did not have the authority to take action regarding the assessment of the Appellant's personal property for tax year 2010.

In April of 2010, the Taxpayer timely filed its personal property tax return with the Colfax County Assessor.⁸ The personal property listed in this personal property tax return filed with the Colfax County Assessor was not placed on the tax rolls of Colfax County, Nebraska, in 2010.⁹ On October 11, 2013, the Colfax County Board of Equalization sent notice to the Taxpayer indicating the items of personal property for tax year 2010 had been placed on the tax rolls and that taxes were due on the items.¹⁰ The Taxpayer protested this action to the County Board.¹¹ On November 26, 2013, the County Board denied the Taxpayer's protest.¹²

The parties agreed that the Nebraska Tax Commissioner held a hearing at which both parties were present, and that the Tax Commissioner issued a ruling after the hearing. The County Board indicated that on August 29, 2013, the Department of Revenue issued a ruling signed by the Tax Commissioner that required the County Board to place the Taxpayer's property on the tax rolls for the 2010 tax year, and that also made determinations of the Taxpayer's 2011

⁴ 442 Neb. Admin., ch. 5, §029 (06/11).

⁵ See, Case File.

⁶ Neb. Rev. Stat. §77-1507 (2012 Cum. Supp.).

⁷ Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

⁸ See, E1:1-26.

⁹ See, E1:1

¹⁰ See, E1:27-28.

¹¹ See, E1:29.

¹² See, E1:29.

personal property taxation. The County Board attempted to place on the record a copy of the Tax Commissioner's ruling, but the ruling was not exchanged in accordance with the Commission's order, and was, therefore, not received into evidence based on an objection by the Taxpayer.

A. Neb. Rev. Stat. §77-1507(1)

The County Board claimed, as stated in its October 11, 2013, letter to the Taxpayer, that the County Board was acting pursuant to Neb. Rev. Stat. §77-1507(1). The property which is the subject of this appeal is personal property. Neb. Rev. Stat. §77-1507(1) clearly states that the processes and authority therein relate to omitted items of real property.¹³ Real property and personal property are two distinct and separate classes and kinds of property in Nebraska.¹⁴ By statutory definition, an item cannot be both real and personal property.¹⁵ Because the authority of the County Board is limited to omitted items of real property under Neb. Rev. Stat. §77-1507(1), the County Board did not have authority to add items of omitted personal property to the tax rolls under this statute.

Likewise, the County Board's and Commission's authority to hear appeals of protests concerning omitted items of real property as contained in Neb. Rev. Stat. §77-1507(1) would also be inapplicable. The County Board's action, if done pursuant to Neb. Rev. Stat. §77-1507(1), is void without separate statute granting the County Board authority to place omitted personal property on the tax rolls or list.¹⁶ Additionally, without separate statute granting the County Board authority to place omitted personal property on the tax rolls, the County Board and Commission both lack jurisdiction to hear the appeal.¹⁷

B. Neb. Rev. Stat. §§77-1233.04 and 1233.06.

At the hearing before the Commission, the County Board alleged that operating under the direction of an order from the Department of Revenue, and relying on Neb. Rev. Stat. §§77-1233.04 and 1233.06, it provided the required notice and placed the items of personal property

¹³ "The county board of equalization may meet at any time for the purpose of assessing any omitted real property[.]" Neb. Rev. Stat. §77-1507(1) (2012 Cum. Supp.).

¹⁴ See, Neb. Rev. Stat. §77-103 (Reissue 2009) (defining "real property"). See also, Neb. Rev. Stat. §77-104 (Reissue 2009) (defining personal property as "all items of property other than real property and franchises.").

¹⁵ See, Neb. Rev. Stat. §77-104 (Reissue 2009) (defining personal property as "all items of property other than real property and franchises.").

¹⁶ See generally, *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

¹⁷ See, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001).

on the tax rolls. The process for noticing a taxpayer regarding actions taken pursuant to Neb. Rev. Stat. §1233.06 requires the county assessor to provide notice on a Tax Commissioner prescribed form and to include the following information thereon: (1) a description of the actions taken; (2) the penalty, if any; (3) the rate of interest; and (4) the taxpayer's appeal rights and procedures.¹⁸ The letter sent by the County Board did not meet several requirements of this statute.¹⁹

First, the County Board is an administrative agency that only has that authority granted it by statute.²⁰ Neb. Rev. Stat. §77-1233.04 clearly gives the County Assessor, and not the County Board, the authority to initiate a change to the personal property tax rolls.²¹ The County Board does not have the authority to make an initial change or send notice under the statute.²² It is notable that a county board does have some authority to review the actions of a county assessor taken under the authority granted by Neb. Rev. Stat. §77-1233.04.²³ However, the undisputed facts in this case are that the County Board acted on its own, and not in response to a protest of the County Assessor's actions. Without authority from the legislature, actions of the County Board are void.²⁴

Second, the County Board's notice states that the change was made based on a clerical error.²⁵ Neb. Rev. Stat. §§77-1233.04 and 1233.06 govern procedures regarding the assessment of omitted personal property, but these statutes do not provide a process for correction based on mere clerical errors. Nebraska Statutes define the term omitted property, and this definition specifically excludes listing errors by the county assessor and clerical errors.²⁶ The term "clerical error" is separately defined by the legislature.²⁷ Therefore, if the basis of the County Board's action, as stated in its letter to the Taxpayer dated October 11, 2013, was due to a

¹⁸ See, Neb. Rev. Stat. §77-1233.06 (1) (Reissue 2009).

¹⁹ See. E1:27.

²⁰ See, *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

²¹ See, Neb. Rev. Stat. §77-1233.04(1) (Reissue 2009).

²² See, Neb. Rev. Stat. §77-1233.04(1) (Reissue 2009).

²³ See, Neb. Rev. Stat. §77-1233.06 (Reissue 2009).

²⁴ See generally, *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

²⁵ See. E1:27.

²⁶ See, Neb. Rev. Stat. §77-123 (2012 Cum. Supp.).

²⁷ See, Neb. Rev. Stat. §77-128 (Reissue 2009).

clerical error, then the action is void if the County Board was relying on Neb. Rev. Stat. §77-1233.04.²⁸

Third, Neb. Rev. Stat. §77-1233.06 outlines mandatory requirements that the County Board's notice provided to the Taxpayer failed to meet.²⁹ Neb. Rev. Stat. §77-1233.06 requires that the notice include a statement "of the action taken, the penalty, and the rate of interest."³⁰ The notice generally stated that an action had resulted in the personal property being placed back on the tax rolls, the stated reason (clerical error), and citing authority (Neb. Rev. Stat. §77-1507(1)). The notice did not provide actual notice to the Taxpayer, if, as the County Board asserted, the personal property was actually placed back on the tax rolls as a consequence of the Tax Commissioner's ruling and under the procedures of Neb. Rev. Stat. §77-1233.04. Further, there is no mention of penalties or interest.³¹ Statutory notice requirements are mandatory.³² If a notice does not include all requisite information it is void.³³

Finally, the statute on its face does not provide any process or procedure that would involve the Tax Commissioner or the Department of Revenue.³⁴ The County Board alleged that the Tax Commissioner required the County Board to provide the notice to the Taxpayer that the personal property was being placed on the tax rolls. The Commission has jurisdiction over appeals from the decisions of the Tax Commissioner.³⁵ An extensive review of statute has produced two known instances where the Tax Commissioner may issue a ruling concerning the exemption of personal property.³⁶ Neither of these two instances involves situations where items of personal property were omitted from tax rolls.³⁷

²⁸ See generally, *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010) (holding that the County Board only has that authority granted it by the legislature).

²⁹ See, Neb. Rev. Stat. §77-1233.06 (Reissue 2009).

³⁰ See, Neb. Rev. Stat. §77-1233.06 (Reissue 2009).

³¹ See, E1:27.

³² See, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001) (citing *Rosenberry v. Douglas County*, 123 Neb. 803, 244 N.W. 398 (1932)).

³³ See, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001) (citing *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954)).

³⁴ See, §§Neb. Rev. Stat. §§77-1233.04 and 1233.06 (Reissue 2009).

³⁵ See, Neb. Rev. Stat. §77-5007(11) (2012 Cum. Supp.).

³⁶ Neb. Rev. Stat. §77-4105 allows the exemption of items of personal property as part of the incentives included in the Employment and Investment Growth Act. See, Neb. Rev. Stat. §77-4105 (Reissue 2009). The Tax Commissioner determines the eligibility of items of personal property under this section. See, Neb. Rev. Stat. §77-4105(c) (Reissue 2009). Neb. Rev. Stat. §77-5725(8)(c) allows the exemption of items of personal property as incentives included in the Nebraska Advantage Act. See, Neb. Rev. Stat. §77-5725(8)(c) (2013 Supp.). The Tax Commissioner determines the eligibility of items of personal property under this section. See, Neb. Rev. Stat. §77-5725(8)(d) (2013 Supp.).

³⁷ See, *Id.*

Even assuming that the Tax Commissioner had ordered the County Board to place the Subject Property on the tax rolls according to Neb. Rev. Stat. §§77-1233.04 and 1233.06, and assuming that the Tax Commissioner had the authority to make that order under some section of Nebraska Statute, the notice sent by the County Board is still void because it failed to meet the mandatory notice requirements discussed above. Again, statutory notice requirements are mandatory.³⁸ If a notice does not include all requisite information it is void.³⁹

Void means: “Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended.”⁴⁰ 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.⁴¹ “Jurisdiction is the inherent power or authority to decide a case.”⁴² An appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction of the subject matter.⁴³ “[I]f the [body] from which an appeal was taken lacked jurisdiction, then the appellate [tribunal] acquires no jurisdiction. And when an appellate [tribunal] is without jurisdiction to act, the appeal must be dismissed.”⁴⁴ The Commission finds that the County Board did not have authority or jurisdiction to place the items of personal property on the tax roll. The Commission does not have jurisdiction over the appeal or petition.

IV. CONCLUSION

For the foregoing reasons the Commission determines that the action of the County Board regarding the personal property of the Taxpayer which is the subject of this case is void.

Where the actions of an administrative agency are void, appellate administrative agencies lack subject matter jurisdiction.⁴⁵ If the County Board’s action was void, then the County Board

³⁸ See, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001) (citing *Rosenberry v. Douglas County*, 123 Neb. 803, 244 N.W. 398 (1932)).

³⁹ See, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001) (citing *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954)).

⁴⁰ Black’s Law Dictionary (6th ed. 1990), p. 1573.

⁴¹ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

⁴² *Hofferber v Hastings Utilities*, 282 Neb. 215, 225, 803 N.W.2d 1, 9 (2011) (citations omitted).

⁴³ See, e.g., *Lane v. Burt County Rural Public Power Dist.*, 163 Neb. 1, 77 N.W.2d 773 (1956).

⁴⁴ *Carlos H. v. Lindsay M.*, 283 Neb. 1004, 1013, xxx N.W.2d xxx, xxx (2012).

⁴⁵ See, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001).

and Commission both lack jurisdiction to hear the appeal.⁴⁶ The Commission finds that it does not have jurisdiction to hear the above captioned appeal.

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. The actions of the Colfax County Board of Equalization which are at issue in this appeal are void.
2. The decision of the Colfax County Board of Equalization is vacated and reversed.
3. All items of personal property that are the subject of this appeal and the County Board's vacated order shall be removed from the tax roll for tax year 2010.
4. The above captioned appeal is dismissed with prejudice.
5. This decision, if no appeal is filed, shall be certified within thirty days to the Colfax County Treasurer, and the officer charged with preparing the tax list for Colfax County as follows:

Viola Bender
411 E 11th St.
Schuyler, NE 68661

Janis Kasik
411 E 11th St.
Schulyer, NE 68661

as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

6. Each party is to bear its own costs in this matter.

SIGNED AND SEALED July 11, 2014

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner

⁴⁶ See, *Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001).