

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

Sally A. Brabec,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 15R 0665

**ORDER FOR DISMISSAL  
WITH PREJUDICE**

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

**I. PROCEDURAL HISTORY**

A jurisdictional show cause hearing was held on January 22, 2016. Sally A. Brabec appeared telephonically at the hearing before the Commission. Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (the County Board). Without objection, the Commission took notice of its case files for the purpose of determining personal jurisdiction and subject matter jurisdiction. The Commission received evidence and argument was offered regarding the Jurisdiction of the Commission to hear this appeal.

**II. STANDARD OF REVIEW**

Neb. Rev. Stat. §77-5013 provides that the Commission obtains jurisdiction over an appeal when the appeal form 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.<sup>1</sup> Any action of the County Board pursuant to §77-1502 may be appealed to the Tax Equalization and Review Commission (the Commission) in accordance with Neb. Rev. Stat. §77-5013 on or before August 24, or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. §77-1502.<sup>2</sup> Parties cannot confer

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<sup>1</sup> See, Neb. Rev. Stat. §77-5013 (2014 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.<sup>3</sup>

### III. ANALYSIS

On November 18, 2015, the Commission received an envelope containing an appeal of the determination of the County Board made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). The deadline for filing appeals of these determinations for tax year 2015 was on or before August 24 or on or before September 10 if the county board has adopted a resolution to extend the deadline for hearing protests under section 77-1502.<sup>4</sup> The Douglas County Board did adopt a resolution extending the deadline for hearing protests (Case File), so the filing deadline for tax year 2015 was September 10, 2015. 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.<sup>5</sup> The envelope containing the appeal was postmarked November 16, 2015 and received by the Commission on November 18, 2015. The Taxpayer presented testimony to the effect that she mistakenly assumed that her 2014 appeal (Case No. 14R-641) would carry over to 2015. The Commission has only that authority specifically conferred upon it by the Constitution of the State of Nebraska, by Nebraska State Statutes, or by construction necessary to achieve the purposes of the relevant provisions or act.<sup>6</sup> The Commission does not generally have equitable powers.<sup>7</sup> Therefore, when presented with claims that sound in equity, the Commission does not have the power to render equitable decisions without express constitutional or statutory authority. Therefore, the Commission determines that the appeal was not timely filed.

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

<sup>4</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

<sup>5</sup> Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

<sup>6</sup> See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

<sup>7</sup> From the time of its inception in 1995 until 2001, the Commission was authorized by statute to hear appeals “as in equity.” See e.g., 1995 Neb. Laws LB 490, §153; 2001 Neb. Laws LB 465 §7; 2004 Neb. Laws LB 973 §51. This was the same language that had previously applied to valuation appeals heard by the district courts prior to the creation of the Commission. In 2007, the Legislature repealed the section of statute which had authorized the Commission to hear appeals “as in equity.” See, 2007 Neb. Laws LB 167, §6.

**IV. CONCLUSION**

The Commission does not have jurisdiction to hear the above captioned appeal.

**ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeal is dismissed with prejudice.
2. As required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.), this decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Diane Battiato  
1819 Farnam St., Room H09  
Omaha, NE 68183-1000

John Ewing  
1819 Farnam St., Rm H03  
Omaha, NE 68183-1000

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

**SIGNED AND SEALED** January 26, 2016

Seal

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner