

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

ALAN L. SOESTER,)	
)	
Appellant,)	Case No. 10A 153
)	
v.)	DECISION AND ORDER
)	DISMISSING FOR WANT OF
DAWES COUNTY BOARD OF)	JURISDICTION
EQUALIZATION,)	(Filing Defect)
)	
Appellee.)	

The above-captioned case was called for a hearing on Order to Show Cause (Filing Defect) why the appeal by Alan L. Soester ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission") should not be dismissed. 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 January 7, 2011, pursuant to an Order to Show Cause (Filing Defect) issued December 14, 2010. 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 appeal. Commissioner Salmon was excused. Commissioner Hotz was present. The appeal was heard by a quorum of a panel of the Commission.

Lisa Adams appeared by telephone, as legal counsel for the Taxpayer.

Joe W. Stecher, a Deputy County Attorney for Dawes County, Nebraska, appeared by telephone, as legal counsel for the Dawes County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits 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 in this case is as follows.

**I.
ISSUES**

Whether the appeal should be dismissed for failure to timely file required documentation.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. An appeal was received on August 24, 2010. (Case File).
3. Documentation of the decision, order, determination or action appealed from was not received with the appeal. (Case File)
4. The appeal in this case was filed based on an action of the County Board pursuant to Section 77-1502 of Nebraska Statutes.

APPLICABLE LAW

1. 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. Neb. Rev Stat. §77-5013 (Cum.

Supp. 2008).

2. The documentation required by Section 77-5013 of Nebraska Statutes is deemed 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.
3. An appeal from an action of a county board of equalization pursuant to section 77-1502 of Nebraska Statutes must be filed on or before August 24, or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under Section 77-1502 .
4. 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).

IV. ANALYSIS

The appeal in this case was filed without a copy of the decision, action, order, or determination being appealed from or other documentation of that decision, action, order, or determination as required by section 77-5013 of Nebraska Statutes. The appeal did have attached to it an assertion that the Taxpayer had filed 15 protests and had received notice of County Board action on 14 protests. Taxpayer's Counsel was given the opportunity to submit a copy of the County Board minutes, the protest filed, or other evidence that a protest concerning the parcel

described in the appeal had been filed, by 5:00 p.m. on January 12, 2011. No documentation was received.

A protest made to a County Board pursuant to section 77-1502 must be filed with the County Clerk. Neb. Rev. Stat. §77-1502(2). The County Clerk is required to attend sessions of the County Board, keep the seal, records and papers of the board, and sign the record of proceedings of the board. Neb. Rev. Stat. §23-1301 (Reissue 2007). The County Clerk is required to prepare a report on each protest filed. Neb. Rev. Stat. §77-1502(4). The County Board is required to meet annually to consider protests filed pursuant to section 77-1502 of Nebraska Statutes. In this case the Taxpayer's contention is that the county clerk failed to perform his or her official duties because his protest was lost or not presented to the County Board or that the County Board, in derogation of its duties failed to act on the protest.

Public officers are presumed to have faithfully performed their official duties and that absent evidence showing misconduct or disregard of the law, the regularity of official acts are presumed. *State v. Hess*, 261 Neb. 368, 622 N.W.2d 891 (2001). The presumption of faithful performance of official duties may be rebutted. *Ludwig v. Board of Commissioners of Sarpy County*, 170 Neb. 600, 103 N.W.2d 838 (1960). It is the Taxpayer's burden to show that the presumption is rebutted. *Id.* The unsupported assertion of the Taxpayer that a protest was filed does not overcome the presumption of faithful performance of official duties that arises in favor of the county clerk or the County Board.

**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 153 is dismissed.
2. Each party is to bear its own costs in this proceeding.

Signed and Sealed January 19, 2011.

Robert W. Hotz, 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.