

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

| | | |
|------------------------------|---|------------------------|
| HARRY R. GABEL, JR. |) | |
| |) | |
| Appellant, |) | CASE NO. 98A-441 |
| |) | |
| vs. |) | |
| |) | |
| SCOTTS BLUFF COUNTY BOARD OF |) | FINDINGS AND ORDERS |
| EQUALIZATION, |) | DISMISSING APPEAL WITH |
| |) | PREJUDICE FOR WANT OF |
| Appellee. |) | JURISDICTION |
| |) | |

The Nebraska Tax Equalization and Review Commission ("Commission") called the above-captioned case for a Show Cause Hearing in the City of Lincoln, Lancaster County, Nebraska, on the 8th day of February, 1999, pursuant to an Amended Notice of Hearing issued the 19th day of January, 1999.

Harry R. Gabel, Jr. ("Taxpayer") failed to appear at the hearing, and the County was excused from appearing. During the hearing, the Commission took judicial notice of certain information, and each of the parties was afforded the opportunity to present evidence and argument. Each party was also afforded the opportunity to cross-examine witnesses of the opposing party as required by law.

Neb. Rev. Stat. §77-5018 (1997 Supp.), requires that every final decision and order entered by the Commission which is adverse to a party be stated in writing or on the record and

FINDINGS OF FACT

1. That Taxpayer is the owner of record of certain agricultural real property as legally described in the petition ("subject property").
2. That Taxpayer filed an appeal with the Commission challenging the 1998 assessed value of his property.
3. That Taxpayer failed to attach a copy of the Form 422 or other documentation establishing the final action of the County as required in the instructions printed on the Appeal Form.
4. That the Commission notified the Taxpayer in writing of this fact on the 29th day of September, 1998.
5. That Taxpayer failed to respond to this notice.
6. That the Commission has an affirmative obligation to determine whether or not it has subject matter jurisdiction pursuant to *Arcadian Fertilizer v. Sarpy Cty. Bd. Of Equal.*, 7 Neb. App. 499 (1998).
7. That the Commission should determine whether it has subject matter jurisdiction before subjecting the Taxpayer and the County to the time and expense of preparing for a hearing on the merits of the appeal.
8. That the Commission therefore, on its own motion, issued an Order to Show Cause and Amended Notice of Hearing on the 19th day of January, 1999.
9. That the parties were provided copies of the Order and Notice of Hearing by certified mail as required by Title 442, Nebr. Admin. Code, Chapter 2, Reg. 001.23.

10. That the Taxpayer received personal notice of the Order and Notice of Hearing as shown by the receipt for certified mail contained in the Commission's case file.
11. That Taxpayer is required to appear at any hearings held by the Commission regarding Taxpayer's appeal.
12. That Chapter 4, Title 442, Section 012.01A1 requires that, if the Taxpayer is a natural person, that person must appear at the hearing.
13. That the Notice of Hearing specifically states in paragraph 3 that if the Taxpayer fails to appear the Commission will enter an order dismissing the case.
14. The Commission called the above-captioned case for hearing on the merits in the City of Lincoln, Lancaster County, Nebraska, on the 8th day of February, 1999.
15. That no one appeared on behalf of the Taxpayer at the hearing.
16. That the parties were afforded the opportunity to present evidence and argument

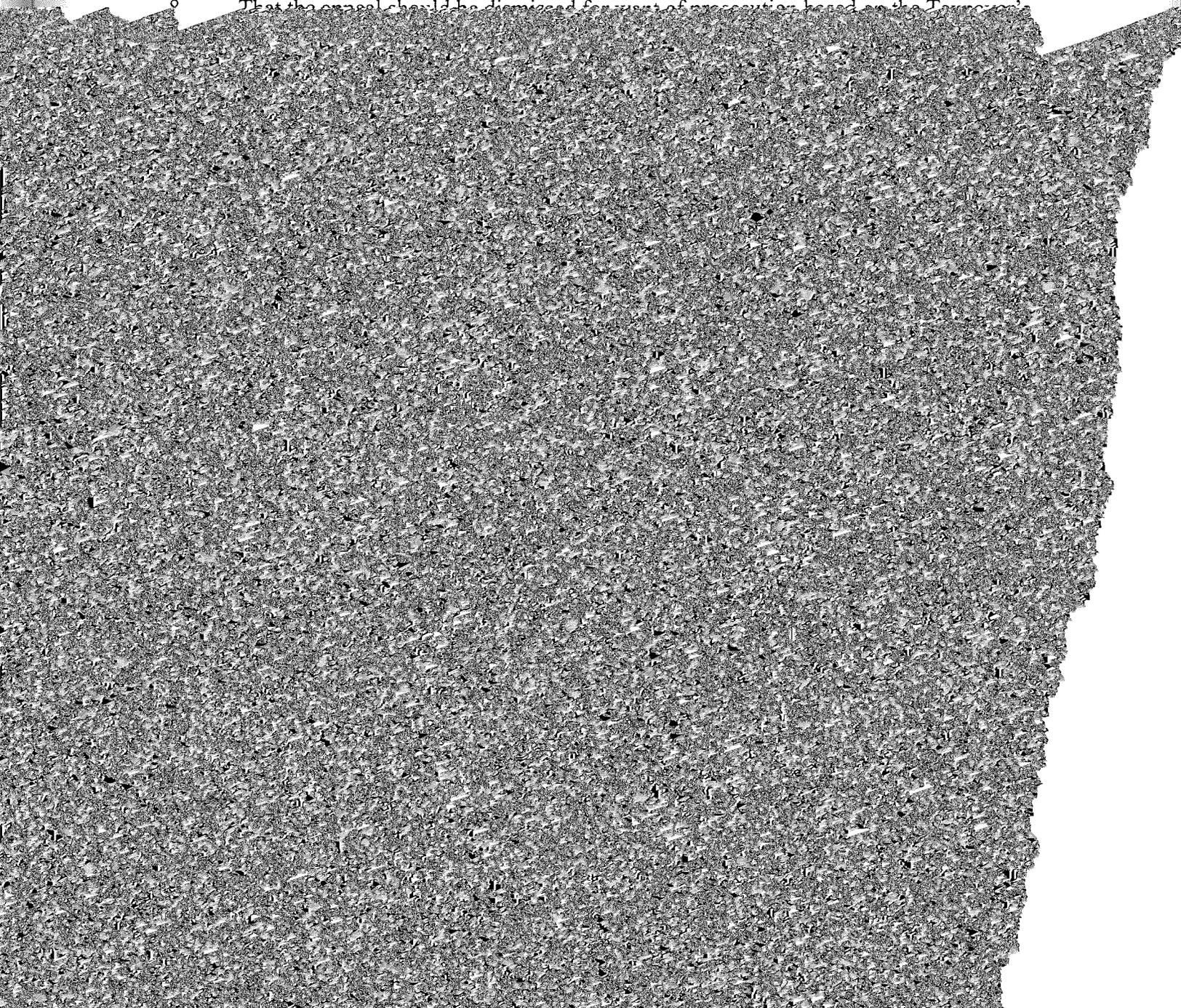
regarding the exercise of jurisdiction as provided by Neb. Rev. Stat. § 77-5015. (Decisions

CONCLUSIONS OF LAW

1. That the Nebraska Supreme Court has held that "Jurisdiction is the inherent power or authority to decide a case. . ." *Wickersham v. State*, 218 Neb. 175, 183, 354 N. W. 2d 134, 140 (1984).
2. That therefore the Commission only has that "authority" specifically conferred upon it by the Constitution of the State of Nebraska, Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act. *See, e. g., Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 554 N. W. 2d 778 (1996).
3. That the statutory jurisdiction of the Nebraska Tax Equalization and Review Commission is generally set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.).
4. That the Commission has an affirmative duty to consider the question of jurisdiction, even if that issue was not raised by the parties. *Arcadian Fertilizer v. Sarpy County Board of Equalization*, 7 Neb. App. 499, 583 N. W. 2d 353 (1998) .
5. That "The fact is that lack of jurisdiction may exist even where the parties submit an issue to an administrative agency in the mistaken belief that the agency has the statutory authority to resolve it. The parties' understanding or intentions are irrelevant to the issue of whether the Commission had jurisdiction, since the parties cannot confer subject matter jurisdiction by either consent or acquiescence. There is, accordingly, no "presumption that the Commission had jurisdiction." *Arcadian Fertilizer v. Sarpy County Board of Equalization*, 7 Neb. App. 499, 504 - 505, 583 N. W. 2d 353 (1998) (citations omitted).

6. That an appellate body cannot acquire jurisdiction over an issue if the body from which the appeal is taken had no jurisdiction over the subject matter. *See, e. g., Lane v. Burt County Rural Public Power District*, 163 Neb. 1, 77 N. W. 2d 773 (1996).
7. That the Commission concludes as a matter of law that the County had no jurisdiction to consider the valuation of the subject property for tax year 1998 as determined by the Scotts Bluff County Assessor.

8. That the appeal should be dismissed for want of prosecution based on the Taxpayers' failure to file a petition for review with the Commission within the time period prescribed by Neb. Rev. Stat. § 79-101(2)(b).



5. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

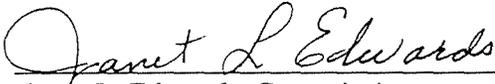
Signed and sealed this 12th day of February, 1999.



SEAL



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner