

DONNA KARNES, TAX COMMISSIONER OF THE STATE OF
NEBRASKA, APPELLANT, V. WILKINSON MANUFACTURING
COMPANY, A NEBRASKA CORPORATION, ET AL., APPELLEES.

368 N.W.2d 788

Filed June 7, 1985. No. 83-914.

1. **Jurisdiction: Appeal and Error.** The right of appeal is statutory and the requirements of a particular statute are mandatory and must be complied with before the appellate court acquires jurisdiction of the subject matter of an action.
2. **Taxation: Public Officers and Employees: Appeal and Error.** The Tax Commissioner is not a "person aggrieved" and therefore does not have the right to appeal a decision of the State Board of Equalization and Assessment, as provided by Neb. Rev. Stat. §§ 77-27,127 and 84-917 (Reissue 1981).

Appeal from the District Court for Lancaster County:
DONALD E. ENDACOTT, Judge. Affirmed.

Paul L. Douglas, Attorney General, and Ralph H. Gillan,
for appellant.

Paul S. Dye and Sharon R. Kresha of Baird, Holm,
McEachen, Pedersen, Hamann & Strasheim, for appellee
Wilkinson Manufacturing.

KRIVOSHA, C.J., BOSLAUGH, WHITE, HASTINGS, SHANAHAN,
and GRANT, JJ.

WHITE, J.

The plaintiff, Donna Karnes, Tax Commissioner of the State
of Nebraska, appeals from an order of the district court for
Lancaster County, Nebraska, denying the plaintiff standing to
appeal a decision of the State Board of Equalization and
Assessment.

The defendant, Wilkinson Manufacturing Company, is a
primary contractor with the U.S. Department of Defense.
Under the terms of Wilkinson's contracts with the United
States, the machinery and tooling acquired to manufacture the
contracted-for items are owned by the United States. At the
termination of the contracts the items remain the property of
the United States.

The Nebraska Department of Revenue issued a notice of
deficiency determination imposing use tax on the
above-described items of machinery and tooling. Wilkinson

paid the tax and filed a claim for refund with the Department of
Revenue. Following a hearing, the Tax Commissioner denied
Wilkinson's claim for refund and upheld the deficiency
assessment, penalty, and interest. Wilkinson Manufacturing
appealed the Tax Commissioner's decision to the state board.
Following a hearing before the state board, on which the Tax
Commissioner sat as a member, the board reversed the Tax
Commissioner's decision and ordered that the tax, penalty, and
interest be refunded to Wilkinson Manufacturing.

The plaintiff appealed the decision of the state board to the
Lancaster County District Court. The district court dismissed
the action on the ground that the Tax Commissioner did not
have standing to appeal the decision of the state board. The
question is simply whether the Legislature has given the Tax
Commissioner the right of appeal from the decisions of the
board of which she is a member. We agree with the district court
that the Legislature has not given her that right.

It is a well-recognized rule that the right of appeal is statutory
and the requirements of a particular statute are mandatory and
must be complied with before the appellate court acquires
jurisdiction of the subject matter of an action. *Whitehouse
Energy Savers v. Hanlon*, 214 Neb. 572, 334 N.W.2d 802
(1983). The applicable statutes do not give the Tax
Commissioner the right to appeal from a final decision of the
state board.

Neb. Rev. Stat. § 77-27,127 (Reissue 1981) describes the
appeal procedure from the state board and states:

Any final decision of the State Board of Equalization
and Assessment shall be *subject to judicial review as
provided in sections 84-917 to 84-919*. Any final action of
the Tax Commissioner, if the person aggrieved thereby
elects not to appeal first to the State Board of Equalization
and Assessment, shall be subject to judicial review as
provided in sections 84-917 to 84-919, as though it were a
final decision of the State Board of Equalization and
Assessment. The review provided by this section shall be
the exclusive remedy available to any taxpayer and no
other legal or equitable proceedings shall issue to prevent
or enjoin the assessment or collection of any tax imposed

under the provisions of sections 77-2701 to 77-27,135.
(Emphasis supplied.)

In accordance with § 77-27,127 judicial review of a final decision of the state board is governed by Neb. Rev. Stat. § 84-917 (Reissue 1981), which provides in part:

Any *person aggrieved* by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review under sections 84-917 to 84-919. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(Emphasis supplied.) "Person aggrieved" as used in § 84-917 is not defined under the provisions of Neb. Rev. Stat. §§ 84-901 et seq. (Reissue 1981). However, "person aggrieved" as used in § 77-27,127 clearly does not include the Tax Commissioner, since the commissioner could hardly have been "aggrieved" by her own decision. The provisions of § 84-917 are simply not applicable to her.

Section 84-917, which governs judicial review of the state board, limits such review to a "person aggrieved." Since the Tax Commissioner is not a person as defined by the statutes, she does not have the right to appeal a decision of the state board. We affirm the decision of the district court denying standing to the plaintiff to appeal the decision of the State Board of Equalization and Assessment.

AFFIRMED.

CAPORALE, J., not participating.

CITY BANK & TRUST CO., CRETE, NEBRASKA, A NEBRASKA CORPORATION, APPELLANT, v. HELEN L. VAN ANDEL, APPELLEE.

____ N.W.2d ____

Filed June 7, 1985. No. 84-127.

1. **Summary Judgment.** A motion for summary judgment shall be granted if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the