NEBRASKA ADMINISTRATIVE CODE

TITLE 442, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 4

TAX EQUALIZATION AND REVIEW COMMISSION

GENERAL RULES OF PRACTICE

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TITLE 442 — TAX EQUALIZATION AND REVIEW COMMISSION

CHAPTER 4 — GENERAL RULES OF PRACTICE

ALPHABETICAL TABLE OF CONTENTS - Chapter 4

SUBJECT	STATUTORY AUTHORITY	SECTIONS
Attendance at Hearing	77-5021	009
~~Commissioner Panels77-5021012Costs77-1510.01, 77-5011, 77-5016, 77-5021006Cross-Appeals~~Authority of Chairperson and Vice-Chairperson	77-501~~5~~1, 77-5021	00~~5~~2
~~Decision and Order~~Commissioner Panels	77-5021	011
Costs	77-1510.01, 77-5011, 77-5016, 77-5021	006
Cross-Appeals	77-501~~8~~5, 77-5021	00~~4~~5
~~Disqualification~~ Decision and Order	77-5018, 77-5021	004
Disqualification of Hearing Officer	77-5021	007
~~Duties of the Chairperson77-5011, 77-5021002~~ Ex Parte Communication Prohibited	77-5021	010
~~Fees: Public~~Examination of Records	77-5021, 84-712 et.seq.~~, 77-5021~~	01~~1~~2
~~Motion to Dismiss for Lack of Personal Jurisdiction~~Pleadings	77-5021	~~013~~001

ALPHABETICAL TABLE OF CONTENTS - Chapter 4

SUBJECT	STATUTORY AUTHORITY	SECTIONS
Stipulations and Offers to Confess Judgment	77-1510, 77-1510.01, 77-5021	003
~~Pleadings77-5021001~~Subpoenas	25-1228, 33-139, 33-139.01, 77-5011, 77-5016(2), 77-5021	008

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NUMERICAL TABLE OF CONTENTS - Chapter 4

SUBJECT	STATUTORY AUTHORITY	SECTIONS
Pleadings	77-5021	001
~~Duties~~Authority of ~~the Chairperson~~Chairperson and Vice-Chairperson	77-5011, 77-5021	002—
Stipulations and Offers to Confess Judgment	77-1510, 77-1510.01, 77-5021	003
Decision and Order	77-5018, 77-5021	004
Cross-Appeals	77-5015, 77-5021	005
Costs	77-1510.01, 77-5011, 77-5016, 77-5021	006
Disqualification of Hearing Officer	77-5021	007
Subpoenas	25-1228, 33-139, 33-139.01, 77-5011, 77-5016(2), 77-5021	008
Attendance at Hearing	77-5021	009
Ex Parte Communication Prohibited	77-5021	010
~~Fees: Public Records84-712 et.seq., 77-5021011~~Commissioner Panels	77-5021	01~~2~~1
~~Motion to Dismiss for Lack~~ Examination of ~~Personal Jurisdiction~~Records	77-5021, 84-712 et.seq.	01~~3~~2

CHAPTER 4 GENERAL RULES OF PRACTICE

001 Pleadings.

001.01 Oath or Affirmation on all Appeals or Petitions. Each appeal or petition filed with the Commission shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true and correct to the best of the knowledge and belief of the person signing the appeal or petition.

001.02 Technical Requirements for a Pleading Other Than the Commission's Appeal Form.

001.02A A pleading shall contain a heading specifying the name of the Commission, the names of the parties, their roles in the appeal, the case number, if assigned, and the title or nature of the pleading.

001.02B The pleading shall state material factual allegations and the action the Commission is requested to take.

001.02C The pleading shall contain the name and address of the party on whose behalf the pleading is filed.

001.02D If the pleading is filed by legal counsel, the pleading shall contain the name, address, telephone number, and Nebraska State Bar Association Number of legal counsel in good standing, licenced to practice in the State of Nebraska and the name, address and telephone number of any other legal counsel associated with them for the proceeding.

001.02E All pleadings shall be filed on white, letter sized (i.e., 8 ½ x 11 inches) paper, and shall be legibly typewritten, photostatically reproducaible, printed or handwritten. If handwritten, a pleading must be written in blue or black ink.

001.03 Service of Pleadings Required. Pleadings filed with the Commission, except the Appeal Form and initial petition, must be served simultaneously upon the opposing party or parties and a certificate of service filed with the Commission. (See, Chapter 2, Section 001.08 of these rules).

001.04 Signature Requirements. Any pleading including the appeal form filed with the Commission must contain original signature(s) of a party or a party's legal counsel. An unsigned pleading will be removed from the case file unless omission of a signature is corrected promptly after being called to the attention of the filer.

001.05 Construction of Pleadings All pleadings will be construed as to do substantial justice.

002 ~~Duties~~Authority of the Chairperson and Vice-Chairperson. The Chairperson may:

002.01 ~~The Chairperson may c~~Call regular or special meetings of the Commission at such times as its business may require. Neb. Rev. Stat. §77-5011

002.02 ~~The Chairperson may a~~Administer oaths and affirmations and perform all other procedural duties in the name of the Commission~~-~~.

002.03 ~~The Chairperson shall a~~Attest all orders, certificates, and process with the official seal of the Commission.

002.04 ~~The Chairperson is hereby authorized to s~~Sign and issue Notices in Lieu of Summons, Notices of Hearings, Orders for Hearing, Orders to Show Cause, Notices of Show Cause Hearings, Consolidation Orders, Orders Allowing Withdrawal of Counsel, Orders ~~Allowing an Offer~~granting leave to to Confess Judgment, Certificates ~~and~~, Subpoenas, Orders dismissing an appeal/petition at the request of the appellant/petitioner, together with other procedural orders, notices, or processes.

~~002.05 The Chairperson shall not issue any s~~ Substantive orders ~~except when approved and confirmed by a quorum of the Commission.~~

~~002.06 The Chairperson shall be responsible for setting~~may only be entered by a quorum.

002.05 Determine the Commission's hearing ~~calendar~~schedule.

002.0~~7~~6 ~~The Chairperson may on behalf of the Commission a~~Adopt an appeal form for use by all persons filing appeals.

002.~~08 Any Commissioner may notify the Chairperson in writing of his or her desire to serve as a~~07 Execute contracts on behalf of the Commission

002.08 Perform all functions and make all determinations required or allowed by the Nebraska Information System.

002.09 Supervise the day to day operations of the Commission and its staff.

002.10 Submit the Commission's biennial budget and any subsequent requests for modification.

002.11 Delegate any responsibility as he or she may determine.

002.12 Order that a proceeding be conducted by a panel of Commissioners and designate members of the panel.

002.13 Designate a primary presiding hearing officer ~~in any or all appeals or other matters heard by~~for a proceeding and an alternate.

002.14 Adopt a fee schedule for copies.

002.15 Consolidate appeals for hearing.

002.16 Consolidate appeals for refund of the filing fee.

002.17 Give and publish notice of any proceeding of the Commission.

002.18 Vice ~~When so notified, the~~Chairperson. The Vice Chairperson may ~~appoint the requesting Commissioner as a hearing officer in the designated matter.~~

~~002.09 The Vice Chairperson may perform the duties~~discharge any responsibility of the Chairperson in ~~the~~his or her absence ~~of~~or inability ~~the Chairperson~~o act.

003 Stipulations and Offers to Confess Judgment.

003.01 A county board of equalization may, at any time, with the approval of the Commission, offer to confess judgment for all or part of the value claimed or all or part of the causes involved in a perfected appeal to the Commission. Neb. Rev. Stat. §77-1510.01

003.01A Refusal to accept a confession of judgment made by a County Board of Equalization, if a recovery greater than the offer is not obtained after hearing on the appeal, will result in an award of costs to the County. (See Chapter 4, §00~~7~~6 of these rules for allowable costs.)

003.02 Nothing in this rule shall prevent any other appellee/respondent other than a County Board of Equalization from offering to confess judgment at any time.

003.03 An offer to confess judgment shall not be deemed to be an admission of the cause of action or relief to which the appellant/petitioner is seeking, and the offer shall not be given in evidence at the hearing.

003.04 An offer to confess judgment unless made during a hearing before the Commission shall be made in writing.

003.05 Stipulations Whenever the parties stipulate to the underlying facts of an appeal or agree to a confession of judgment made by the appellee, or a confession of judgment in part by the appellee, the parties shall submit written pleadings which recite the agreement, and are signed by all parties. The parties shall also submit a proposed Decision and Order to the Commission which disposes of all issues before the Commission and to which all parties agree as to both form and content. That proposed Decision and Order may be modified by the Commission as necessary to conform to the law.

004 Decision and Order

004.01 A copy of any decision and order of the Commission shall be served on all parties of record either in person or by regular United States mail, postage prepaid. The Chairperson may also cause any decision and order to be served on the parties by certified mail, and may request a return receipt on the certified mail.

004.02 A copy of the decision and order shall be certified to the county treasurer and to the officer charged with preparing the tax list, when such decision and order becomes final, and such officers shall correct their records accordingly. Neb. Rev. Stat. §77-5018.

005 Cross-Appeals. If an appeal of a decision, action, order or determination has been perfected to the Commission, any subsequent appeal of that decision, action, order or determination by another party will be deemed a cross appeal. An appeal deemed to be a cross-appeal is subject to all of the provisions of these rules pertaining to an appeal and must be perfected in accordance with these rules and Neb. Rev. Stat. §77-5013.

006 Costs.

006.01 Except as provided in Neb. Rev. Stat. §§ 77-1510.01 and 77-5016(1) the costs of any appeal, including the costs of witnesses, may be taxed by the Commission as it deems just unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county. Neb. Rev. Stat. §§77-1510.01 and 77-5016(1). (See Chapter. 2, §001.16 for definition of costs).

006.02 A County Board of Equalization, with the consent of the Commission, may offer to confess judgment for part of the value claimed or part of the causes involved in the action. If (1) the appellant is present and refuses to accept such confession of judgment in full satisfaction of his or her demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its amount, and the time of making it, and (2) at the hearing the appellant does not recover more than was offered to be confessed, the appellant shall pay all the costs and fees the board incurred after making the offer. Neb. Rev. Stat. §77-1510.01

006.03 All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered. Neb. Rev. Stat. §77-5016(1).

006.04 The party requesting a formal hearing is liable for payment of court reporter appearance fees pending a final decision. Neb. Rev. Stat. §77-5016(1).

006.05 Guidelines for Permissive Assessment of Costs. Except as provided in Neb. Rev. Stat. §§77-1510.01 and 77-5016(1), the Commission may consider the following guidelines for assessment of costs:

006.05A The Commission may assess costs of a non-offending party against a party who willfully or intentionally fails, neglects or refuses to comply with an Order of the Commission or a Notice of Hearing issued by the Commission.

006.05B The Commission may assess costs of each opposing party when a party fails to appear for a duly noticed hearing.

006.05C The Commission may assess as costs all or part of the costs incurred by a party when an opposing party takes action, if the Commission finds and determines that the action complained of was solely designed and undertaken in order to harass, annoy, or offend a person or opposing party, or when the action undertaken was frivolous or dilatory.

006.05D The Commission may assess as costs all or part of the costs incurred by a party when an opposing party seeks to have a hearing continued within three (3) days of the scheduled hearing. The Commission may assess these costs on its own motion or on the motion of the opposing party if the Commission grants the continuance.

006.06 Costs may be awarded pursuant to Chapter 12 of these Rules.

006.07 An order awarding costs may be enforced in the District Courts. Neb. Rev. Stat. §77-5011.

007 Disqualification of Hearing Officer.

007.01 Any party may, ~~for good cause shown in a written~~by motion filed with the Commission, request the disqualification of any presiding hearing officer, hearing officer, special master or referee.

007.02 Unless the presiding hearing officer, hearing officer, special master or referee voluntarily disqualifies himself or herself, a hearing shall be held on the motion.

007.03 Disqualification shall only be ordered where there is an actual conflict of interest (as that term is defined in these Rules) on the part of the presiding hearing officer, hearing officer, special master or referee, or when the moving party demonstrates by clear and convincing evidence that a reasonable person who knew the circumstances of the case would question the presiding hearing officer, hearing officer, special master or referee's impartiality under an objective standard of reasonableness. *State v. Pattno*, 254 Neb. 733, 579 N. W. 2d 503 (1998).

~~007.04 The decision regarding the motion to disqualify may be issued on the record or in writing. Any decision regarding the motion to disqualify shall not be a "final order" for purposes of appeal of that decision.~~

008 Subpoenas.

008.01 The Commission may issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. Neb. Rev. Stat. §77-5016(2).

008.02 Subpoenas may be enforced in the district courts. Neb. Rev. Stat. §77-5011.

008.03 Failure of a witness to comply with the terms of a subpoena is a criminal offense. Neb. Rev. Stat. §77-5016.08.

008.04 The Chairperson of the Commission may, on application of any person having a cause or any matter pending before the Commission, issue a subpoena for witnesses under the seal of the Commission inserting all the names required by the applicant in one subpoena.

008.05 The subpoena of the Commission shall be directed to the person named therein, requiring him or her to attend at a particular time and place, to testify as a witness. The subpoena may contain a clause directing a witness to bring with him or her any book, writing, or other

thing under his or her control, which he or she is bound by law to produce as evidence

008.06 When the attendance of a witness before any officer authorized to take depositions (i.e., a notary public) is required, then the subpoena shall be issued by such officer.

008.07 The subpoena shall be served in the manner requested by the applicant; by either (1) personally serving a copy, or (2) by restricted or certified mail, return receipt requested, not less than six (6) days before the hearing or deposition which said witness is required to attend. The person making such service shall make a return thereof showing the manner of service. A subpoena may be served by any person not interested in the matter or by the sheriff. When served by any person other than a sheriff, proof of service shall be shown by affidavit, but no costs of serving shall be allowed, except when served by a sheriff.

008.08 Witnesses cannot be compelled to attend a hearing out of the state where they are served or at a distance of more than one hundred miles from the place of their residence or from the place where they are served with a subpoena, unless within the same county. Witnesses shall not be obliged to attend a deposition outside the county of their residence or outside the county where the subpoena is served.

008.09 Witness Fees. The Chairperson of the Commission may, upon deposit with the Commission of sufficient money to pay the legal fees and mileage and reasonable expenses for hotel and meals of a witness who attends at points so far removed from his or her residence as to make it reasonably necessary that such expenses be incurred, order a subpoena to issue requiring attendance at a hearing, but excluding a deposition appearance, of the witness from a greater distance within the state than that set forth in these Rules. Witness fees shall be determined in accordance with Neb. Rev. Stat. §33-139. Mileage shall be computed at the rate provided for state employees by

Nebraska State Law. The subpoena shall show that it was issued under the provisions of this rule. After the appearance of the witness in response to any such subpoena, the Chairperson of the Commission shall enter an order directing the payment to the witness from the deposit of legal fees, mileage, and the actual expenses for hotel and meals incurred by the witness. If the deposit is not adequate for such purpose, the Commission or hearing officer shall direct the party procuring the issuance of the subpoena to pay the deficiency to the witness. Costs may be recovered as provided for in these Rules. Legal fees, as that term is used in this subsection, do not include attorney fees.

008.10 Employees of the State of Nebraska or its political subdivisions are prohibited from receiving witness fees when the employee is called as a witness in connection with his or her officially assigned duties. Neb. Rev. Stat. §33-139.01.

008.11 When a subpoena is issued at the request of any agency of state government, the witness shall not be entitled to demand his or her traveling fees and fee for one day's attendance but shall be required to obey the subpoena if, at the time of service upon him or her, he or she is furnished a statement prepared by the agency advising him or her of the rate of travel fees allowable, the fee for each day's attendance pursuant to the subpoena, and that he or she will be paid at such rates following his or her attendance.

008.12 Except as provided above a witness may demand his or her traveling fees and fee for one day's attendance when the subpoena is served upon him or her, and if the same is not paid the witness shall not be obliged to obey the subpoena. The fact of such demand and nonpayment shall be stated on the return.

008.13 At the commencement of each day, after the first day, a witness may demand his or her fees for that day's attendance in obedience to a subpoena, and if the same is not paid he or she shall not be required to remain.

009 Attendance at Hearing. An appellant or petitioner must be present at any hearing on the merits of an appeal or petition with or without legal counsel, to avoid dismissal or relief by default unless their presence is waived by the Commission for good cause. Individuals required to be present by this rule are:

009.01 Natural Person. If an appellant or petitioner is a natural person, that person or their "guardian" or "conservator" or "next friend" as those terms are defined in Nebraska State Law and Nebraska Supreme Court decisions

009.02 Legal Entity. If an appellant or petitioner is a corporation, partnership, limited partnership, limited liability company or other legal entity, an officer, partner, general partner, member, manager, or other person holding similar authority or a full-time salaried employee of the entity.

009.03 Trustee. If an appellant or petitioner is a trustee, that trustee.

009.04 Union, Association, or Other Organization. If an appellant or petitioner is a union, association, or any other organization, a director, officer, or full-time salaried employee of the union, association, or other organization.

009.05 More Than One Property Owner. If property is owned by more than one person, one of the property owners as provided in this rule.

009.06 Government. If an appellant or petitioner is an elected or appointed official, officer, director, manager, that person or if the appellant or petitioner is a political subdivision, or state agency, a director, officer or full time employee of the political subdivision, or state agency.

009.07 Other Persons. If an appellant or petitioner is any other person including but not limited to a successor in interest, lessee, licencee, any bankruptcy trustee, receiver, personal representative or any other person appointed by a Nebraska Court ofr a Court of the United States, that person.

009.08 Failure to Appear. If an appellant/petitioner is not present at any hearing before the Commission within fifteen (15) minutes of a time for hearing, for which notice has been provided to the appellant/petitioner, the Commission may enter an order dismissing the appeal/petition or order relief by default.

009.09 Medical Condition of Appellant/Petitioner. If the medical condition of the appellant/petitioner (due to age, accident or illness) prevents the appellant/petitioner from being personally present at a hearing a member of the appellant's/petitioner's family who has a power of attorney from the appellant/petitioner may be present on their behalf at the hearing . For purposes of this subsection "member of the family" shall mean parents and children, grandparents and grandchildren of every degree, brothers and sisters, uncles, aunts, nieces and nephews.

009.09A Documentation of Medical Condition. In order to comply with this subsection of these rules an appellant/petitioner who cannot be present for a hearing before the Commission due to a medical condition must additionally provide the Commission documentation of the condition, such as a written statement signed by the appellant's/petitioner's doctor, declaring that a medical condition prevents the appellant/petitioner from being present.

009.10 Legal Counsel. ~~Any person may have l~~Legal counsel may appear on behalf of a party.

009.11 Unauthorized Practice of Law. Only a person authorized to sign a pleading may appear before the Commission as a party or on behalf of a party, except as may be allowed by these rules or decisions of the Nebraska Supreme Court. (See, Chapter 5, Section 001.04).

009.11A Nonresident Legal Counsel. A lawyer admitted in another jurisdiction and not disbarred or suspended from practice in any jurisdiction, may, on motion served on all parties to the

appeal/petition, appear on behalf of a party in an appeal/petition before the Commission provided that:

009.11A1 Prior to undertaking any legal representation a written motion is filed with the Commission requesting an order granting nonresident attorney's motion to appear on behalf of a party;

009.11A2 ~~Such~~A nonresident attorney shall, if the motion to appear is granted, take the oath required by Neb. Rev. Stat. § 7-104; and,

009.11A3 ~~File a~~A written showing is filed with the Commission stating that legal services will be provided on a temporary basis and are (1) undertaken in association with a lawyer who is admitted to practice in Nebraska and who will actively participate in the proceeding; (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer of person the lawyer is assisting is authorized by law or order to appear in such proceedings or reasonably expects to be so authorized; (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Nebraska or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; (4) are not within (2) or (3) and arise of or are reasonably related to the lawyers practice in a jurisdiction in which the lawyer is admitted to practice.

009.11B A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction, may appear before the Commission if the legal services provided are provided to the lawyer's employer or its organizational

affiliates; are services that the lawyer is authorized to provide by federal law or the laws of Nebraska. See Rule 5.5 of the Nebraska Rules of Professional Conduct as promulgated by the Nebraska Supreme Court.

~~009.11C Appearance of Property Owner or Other Party Required. Any party who is represented by legal counsel shall appear at any hearing on the merits of an appeal or petition except as otherwise provided in these Rules.~~

009.12 Withdrawal of Legal Counsel. Upon timely motion stating good cause shown and an affidavit which recites that legal counsel has served a copy of the motion on his or her client and all parties, legal counsel shall be permitted to withdrawal.

EXPLANATORY STATEMENT

The unauthorized practice of law in Nebraska is prohibited by statute. Neb. Rev. Stat. § 77-101. Rules and decisions of the Nebraska Supreme Court define the term unauthorized practice of law. Legal Counsel and the attorney members of the Commission are required to act in accordance with the statute, and the rules and decisions of the Court.

010 Ex Parte Communication Prohibited. In all contested cases before the Commission the following shall apply to ex parte communication:

010.01 No party to a contested case or other person outside the Commission having an interest in the contested case shall make or knowingly cause to be made any ex parte communication to the Commissioners, Special Master, Referee or Commission employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

010.02 No Commissioner, Special Master, Referee or Commission employee who is or may reasonably be expected to be involved in the decision

making process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the Commission having an interest in the contested case.

010.03 No Commissioner, Special Master, Referee or Commission employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a Commissioner, Special Master, Referee or Commission employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

010.04 Any Commissioner, Special Master, Referee or Commission employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or knowingly causes to be made an ex parte communication shall file in the record of the contested case (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt of making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

010.05 The prohibitions of this chapter shall apply from the time ~~the~~ an initial pleading in a contested case is filed with the Commission or at such time it is reasonably certain that an initial pleading will be filed with the Commission until a final decision in a contested case is issued by the Commission from which no appeal can be taken.

~~011 Fees: Public Records. The Commission shall adopt a fee schedule that sets the amount to be charged for obtaining copies of public records. (See Neb. Rev. Stat. §84-712 et. seq.). The Commission shall provide copies of public records in accordance with state law.~~

01~~2~~1 Panels of Commissioners.

01~~2~~1.01 Any proceeding commenced with three commissioners present is a proceeding undertaken by a panel of commissioners approved by the Commission. The Chairperson or presiding hearing officer may excuse a Commissioner from participation in a proceeding

01~~2~~1.02 The Chairperson may order that any proceeding be heard by a panel of Commissioners.

01~~2~~1.03 Any Commissioner may notify the Chairperson in writing of his or her desire to serve as a hearing officer in any or all appeals or other matters heard by the Commission.

~~013 Motion to Dismiss for Lack of Personal Jurisdiction. Objections to the jurisdiction of the Commission shall be made by filing a motion to dismiss for lack of personal jurisdiction. A party making such a motion shall designate the specific defects upon which the party relies. If no objection to the jurisdiction of the Commission is made prior to the hearing on the merits or at any other time appearances at a hearing before~~

012 Examination of Records. The case file and other records of the Commission are ~~made, personal jurisdictional defects are waived. If a motion to dismiss for lack of personal jurisdiction is overruled, the objection to the Commission's jurisdiction must be renewed in order to preserve the issue for purposes of appeal.~~matters of public record. Public records may be examined during regular business hours of the Commission. Neb. Rev. Stat §84-712 et. seq.