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expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and Neb. Ct. R. §§ 3-310(P) and 3-323(B) of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by this court.

JUDGMENT OF PUBLIC REPRIMAND.

DAVE ENGLER ET AL., APPELLANTS, V. STATE OF NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION, APPELLEE.

814 N.W.2d 387

Filed June 8, 2012. No. S-11-182.

1. **Jurisdiction: Judgments: Appeal and Error.** Determination of a jurisdictional issue which does not involve a factual dispute is a matter of law which requires an appellate court to reach its conclusions independent from a trial court.
2. **Statutes: Appeal and Error.** Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.
3. **Constitutional Law: Legislature: Immunity: Waiver.** Neb. Const. art. V, § 22, is not self-executing, but instead requires legislative action for waiver of the State's sovereign immunity.
4. **Statutes: Immunity: Waiver.** Statutes that purport to waive the protection of sovereign immunity of the State or its subdivisions are strictly construed in favor of the sovereign and against the waiver.
5. **Immunity: Waiver.** A waiver of sovereign immunity is found only where stated by the most express language of a statute or by such overwhelming implication from the text as will allow no other reasonable construction.
6. **Jurisdiction: Immunity.** Sovereign immunity deprives a trial court of subject matter jurisdiction unless the State consents to suit.
7. **Jurisdiction: Appeal and Error.** When a lower court lacks the authority to exercise its subject matter jurisdiction to adjudicate the merits of the claim, issue, or question, an appellate court also lacks the power to determine the merits of the claim, issue, or question presented to the lower court.

Petition for further review from the Court of Appeals, IRWIN, MOORE, and CASSEL, Judges, on appeal thereto from the District Court for Lancaster County, ROBERT R. OTTE, Judge. Judgment of Court of Appeals affirmed.

Edward F. Fogarty, of Fogarty, Lund & Gross, for appellants.

Jon Bruning, Attorney General, and Lynn A. Melson for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF THE CASE

The State of Nebraska Accountability and Disclosure Commission (Commission) issued an advisory opinion (Advisory Opinion No. 199), answering the question of whether Omaha firefighters can engage in a campaign to raise funds for the Muscular Dystrophy Association (MDA) during on-duty time paid for with taxpayer funds or using city-owned uniforms and equipment. The Commission answered "no," stating that such activities constitute a violation of Neb. Rev. Stat. § 49-14,101.01(2) (Reissue 2010) of the Nebraska Political Accountability and Disclosure Act (NPADA).

Nebraska Professional Firefighters Association; its president, Dave Engler, and the MDA (collectively the appellants) filed an action against the Commission, asking the district court for Lancaster County to declare that Advisory Opinion No. 199 was invalid and to order it withdrawn from publication. The district court determined that it lacked subject matter jurisdiction to review a Commission advisory opinion and granted the Commission's motion to dismiss.

On appeal, the Nebraska Court of Appeals agreed with the district court's analysis, summarily dismissed the appellants' appeal for lack of jurisdiction, and denied the appellants' subsequent motion for rehearing. We granted the appellants' petition for further review. Because we determine that the district court correctly concluded that it lacked subject matter jurisdiction, we conclude that the Court of Appeals correctly dismissed the appeal. We affirm.

STATEMENT OF FACTS

In March 2010, the city of Omaha requested that the Commission consider whether it was a violation of the NPADA for Omaha firefighters to engage in fundraising for the MDA

while on city time using city-owned uniforms and equipment. See Neb. Rev. Stat. §§ 49-14,100 and 49-14,123(10) (Reissue 2010). The issue arose out of the firefighters' participation in the MDA's "Fill the Boot" campaign as part of the Jerry Lewis Labor Day telethon. On March 12, the Commission issued Advisory Opinion No. 199, in which the Commission determined that such activities constitute a violation of § 49-14,101.01(2). Advisory Opinion No. 199 stated that "Omaha Firefighters may not, under the terms of Section 49[-14],101.01(2), use on duty time, paid for with taxpayer funds, to engage in a campaign to raise funds for the [MDA], which is a private, charitable corporation."

On August 19, 2010, the appellants filed an amended petition captioned "Amended Petition for Declaratory Judgment (84-911)" in which they requested that the district court review the validity of Advisory Opinion No. 199. The petition alleged that the advisory opinion was invalid and asked the court to order it withdrawn from publication.

On September 1, 2010, the Commission filed a motion to dismiss pursuant to Neb. Ct. R. Pldg. § 6-1112(b)(1), for lack of subject matter jurisdiction, and § 6-1112(b)(6), for failure to state a claim for relief. In an order, filed February 2, 2011, the district court dismissed the action for lack of subject matter jurisdiction. In its order, the court stated that the appellants had alleged that the court had jurisdiction over the matter pursuant to Neb. Rev. Stat. § 49-14,131 (Reissue 2010) of the NPADA and Neb. Rev. Stat. §§ 84-911 and 84-917 (Reissue 2008) of the Administrative Procedure Act (APA). However, we note that the controlling petition did not allege § 84-917 as a jurisdictional basis and that the appellants did not claim on appeal that jurisdiction is based on § 84-917, which pertains to contested cases. Further, because we determine below that the appellants' action did not meet the threshold requirements of § 49-14,131, we make no comment on the propriety of specifically invoking § 84-911 as the APA jurisdictional basis had they done so.

In its order, the district court referenced § 49-14,131 of the NPADA, which provides that "[a]ny final decision by the

[C]ommission in a contested case or a declaratory ruling made pursuant to the [NPADA] may be appealed. The appeal shall be in accordance with the [APA]."

Section 84-911(1) of the APA provides in part that

> [t]he validity of any rule or regulation may be determined upon a petition for a declaratory judgment thereon addressed to the district court of Lancaster County if it appears that the rule or regulation or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the petitioner.

The district court rejected the appellants' argument that Advisory Opinion No. 199 constituted a rule or regulation that could be reviewed pursuant to § 84-911 of the APA. The district court relied on cases such as *Perryman v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 66, 568 N.W.2d 241 (1997), *overruled on other grounds, Johnson v. Clarke*, 258 Neb. 316, 603 N.W.2d 373 (1999), and *Logan v. Department of Corr. Servs.*, 254 Neb. 646, 578 N.W.2d 44 (1998). Thus, the court determined that § 84-911 did not provide jurisdiction for the court to review Advisory Opinion No. 199.

Because the district court found there was no subject matter jurisdiction, it declined to address the Commission's argument that the appellants' petition failed to state a claim upon which relief can be granted, pursuant to § 6-1112(b)(6) of the Nebraska Court Rules of Pleading in Civil Cases, thus following the procedure outlined in *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010), in which we held that consideration should first be given to subject matter jurisdiction before considering possible dismissal based on a failure to state a claim for relief. The court granted the Commission's motion to dismiss.

The appellants appealed the district court's order. On April 11, 2011, the Nebraska Court of Appeals summarily dismissed the appeal with the following docket entry:

> Appeal dismissed pursuant to Neb. Ct. R. App. P. § 2-107(A)(2). When a lower court lacks the authority to exercise its subject matter jurisdiction to adjudicate the merits of the claim, issue, or question, an appellate court

> also lacks the power to determine the merits of the claim, issue, or question presented to the lower court. Kaplan v. McClurg, 271 Neb. 101, 710 N.W.2d 96 (2006).

On April 21, 2011, the appellants filed a motion for rehearing. The motion was denied.

We granted the appellants' petition for further review.

ASSIGNMENT OF ERROR

The appellants claim, summarized and restated, that the Court of Appeals erred when it concluded that both the district court and the appellate court lacked jurisdiction to review the Commission's Advisory Opinion No. 199. Because there is no merit to this assignment of error, we need not consider other assigned errors addressed to the correctness of the content of Advisory Opinion No. 199. See *In re Interest of Hansen*, 281 Neb. 693, 798 N.W.2d 398 (2011) (stating that appellate court is not obligated to engage in analysis that is not necessary to adjudicate case and controversy before it).

STANDARDS OF REVIEW

[1] Determination of a jurisdictional issue which does not involve a factual dispute is a matter of law which requires an appellate court to reach its conclusions independent from a trial court. *City of Waverly v. Hedrick, ante* p. 464, 810 N.W.2d 706 (2012).

[2] Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court. *Republic Bank v. Lincoln Cty. Bd. of Equal., ante* p. 721, 811 N.W.2d 682 (2012).

ANALYSIS

The appellants claim on further review that because the district court had erred when it determined that it lacked subject matter jurisdiction over their petition, the Court of Appeals also erred when it dismissed their appeal for lack of jurisdiction. There are no disputed issues of fact in this case, and thus the jurisdictional issue before us is a matter of law which we review independently of the lower courts. See *City of Waverly v. Hedrick, supra*. We find no merit to the appellants' claim of error.

The appellants sought relief in district court from an unfavorable advisory opinion issued by the Commission. The appellants refer us to §§ 49-14,131 and 84-911 as the jurisdictional bases for seeking relief in district court. Section 49-14,131 provides: "Any final decision by the [C]ommission in a contested case or a declaratory ruling made pursuant to the [NPADA] may be appealed. The appeal shall be in accordance with the [APA]." The appellants specifically relied on § 84-911 of the APA which concerns appeals involving the validity of rules or regulations as the alleged APA basis of jurisdiction.

The language of § 49-14,131 is clear that a petitioner can file an appeal to the district court from outcomes in two identified types of matters before the Commission: (1) a contested case or (2) a declaratory ruling. Where there is a decision in one of these two identified matters, the appeal shall follow the procedure set forth in the APA. Reading §§ 49-14,131 and 84-911 together, it is also clear that the threshold requirements of § 49-14,131 must be met before taking an appeal in accordance with the APA. In sum, § 49-14,131 identifies a "contested case" and a "declaratory ruling" as the matters suitable for APA appeal.

The parties agree that this matter does not involve a "contested case" under § 49-14,131, and therefore, the issue is whether an "advisory opinion" should be treated as a "declaratory ruling" for the purposes of appealability under § 49-14,131. The appellants contend that an advisory opinion equates to a declaratory ruling and is thus appealable pursuant to § 49-14,131. We do not agree.

Statutory interpretation is a question of law. *Republic Bank, supra*. The plain language of § 49-14,131 does not support the appellants' interpretation. Section 49-14,131 authorizes appeals seeking relief against the Commission for the actions specified, and such appeals shall be in accordance with the APA. In this case, § 84-911 of the APA is alleged to be the basis for jurisdiction over the Commission. A suit against an agency of the state is the same as a suit against the state, and therefore the doctrine of sovereign immunity is implicated. See, *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010); *Concerned Citizens v. Department of Environ. Contr.*, 244 Neb.

152, 505 N.W.2d 654 (1993). We have stated that § 84-911 provides a limited statutory waiver of sovereign immunity. See, *Gaylen v. Balka*, 253 Neb. 270, 570 N.W.2d 519 (1997); *Perryman v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 66, 568 N.W.2d 241 (1997).

[3-5] Neb. Const. art. V, § 22, provides that "[t]he state may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought." This provision of the Constitution is not self-executing, but instead requires legislative action for waiver of the State's sovereign immunity. *McKenna v. Julian*, 277 Neb. 522, 763 N.W.2d 384 (2009). Statutes that purport to waive the protection of sovereign immunity of the State or its subdivisions are strictly construed in favor of the sovereign and against the waiver. *Britton v. City of Crawford*, 282 Neb. 374, 803 N.W.2d 508 (2011). A waiver of sovereign immunity is found only where stated by the most express language of a statute or by such overwhelming implication from the text as will allow no other reasonable construction. *Id.* As we consider § 49-14,131, which provides the rationale for invoking § 84-911, we will not expand the meaning of "declaratory ruling" in § 49-14,131 to include "advisory opinion" and thereby effectively expand § 84-911—unless the express language of § 49-14,131 or the text of the statute and the Commission's rules and regulations provide an overwhelming implication to do so. Neither the text nor the rules and regulations so imply.

The express language of § 49-14,131 allows appeals under the APA only for contested cases and declaratory rulings: The express language of the statute does not include appeals for advisory opinions. Notwithstanding the statutory language, the appellants urge us to imply that advisory opinions are encompassed by § 49-14,131. An examination of the rules and regulations of the Commission convinces us that it would not be prudent for us to imply that an advisory opinion is the equivalent of a declaratory ruling for purposes of § 49-14,131.

The Commission is authorized to "[p]rescribe and publish . . . rules and regulations . . . pursuant to the [APA]." § 49-14,123(1). We have stated that we may take judicial notice of state agencies' rules and regulations. See, *JCB*

Enters. v. Nebraska Liq. Cont. Comm., 275 Neb. 797, 749 N.W.2d 873 (2008); *Gase v. Gase*, 266 Neb. 975, 671 N.W.2d 223 (2003); Neb. Rev. Stat. § 84-906.05 (Reissue 2008). The Commission's rules and regulations make clear that advisory opinions, contested cases, and declaratory rulings are three different and distinct categories of matters that come before the Commission. The Commission's rules and regulations provide three separate rules, identified as "1-(5) Advisory Opinions," "1-(6) Contested Cases," and "1-(4) Declaratory Rulings." 4 Neb. Admin. Code, ch. 1 (1990). Each rule has subparts not repeated here regarding detailed procedures for pursuing each avenue. Where advisory opinions, contested cases, and declaratory rulings are so clearly distinct from one another, the Commission's rules and regulations do not permit us to imply that advisory opinions are the equivalent of either of the appealable matters identified in § 49-14,131, to wit, contested cases and declaratory rulings.

For completeness, we note that the Commission's rules and regulations further provide that an advisory opinion can be challenged by seeking a declaratory ruling regarding the same subject. The Commission's rules provide: "GRIEVANCE WITH ADVISORY OPINION: Any person or governing body aggrieved by an official advisory opinion issued by the Commission may file a petition for declaratory ruling pursuant to the provisions of 1-(4)." 4 Neb. Admin. Code, ch. 1, § 1-(5)(b). If a grievance with an advisory opinion is pursued and results in an unfavorable declaratory ruling, such declaratory ruling can then be appealed pursuant to § 49-14,131 in accordance with the APA.

There is no allegation or suggestion that a grievance regarding Advisory Opinion No. 199 was filed seeking a declaratory ruling. The appellants did not exhaust or allege that they exhausted the available administrative remedies which, if unsuccessful, could have recast the advisory opinion into an appealable declaratory ruling. See 73 C.J.S. *Public Administrative Law and Procedure* § 79 at 272 (2004) (stating that "[w]here an administrative remedy is provided, particularly where it is provided by statute or rules or regulations having the force of law, relief ordinarily must be sought initially from the

appropriate administrative agency and the administrative remedy usually must be exhausted before a litigant may resort to the courts"). Compare § 84-911(1) (not requiring exhaustion with respect to rules and regulations). Under the Commission's rules and regulations, there was an opportunity for the appellants whose standing has not been challenged to turn Advisory Opinion No. 199 into a declaratory ruling which is the kind of matter appealable under § 49-14,131 in accordance with the APA.

[6,7] In sum, the appellants rely on § 49-14,131 as the rationale for jurisdiction under the APA, but they do not have a decision that fits under § 49-14,131. Sovereign immunity deprives a trial court of subject matter jurisdiction unless the State consents to suit. See *McKenna v. Julian*, 277 Neb. 522, 763 N.W.2d 384 (2009). Section 84-911, upon which appellants rely and upon which the case was considered in the lower courts, is a limited waiver of sovereign immunity, and the advisory opinion which the appellants seek to have reviewed in their case against the Commission is not a matter for which waiver has been granted. Accordingly, the district court correctly determined that it lacked subject matter jurisdiction to review Advisory Opinion No. 199. When a lower court lacks the authority to exercise its subject matter jurisdiction to adjudicate the merits of the claim, issue, or question, an appellate court also lacks the power to determine the merits of the claim, issue, or question presented to the lower court. *Kaplan v. McClurg*, 271 Neb. 101, 710 N.W.2d 96 (2006). Thus, the Court of Appeals did not err when it dismissed the appellants' appeal.

CONCLUSION

The Court of Appeals correctly determined that the district court lacked subject matter jurisdiction over the appellants' petition for review of the Commission's Advisory Opinion No. 199. The Court of Appeals summarily dismissed the appellants' appeal. On further review, we conclude the Court of Appeals did not err and we affirm.

AFFIRMED.