

**LETTER OPINION**  
**99-L-26**

March 29, 1999

Ms. Robin Thompson Gordon  
McHenry County State's Attorney  
P.O. Box 329  
Towner, ND 58788-0329

Dear Ms. Thompson Gordon:

Thank you for your request that I provide my opinion regarding several property tax issues. You specifically ask whose responsibility it is, the county's or the landowner's, to discover and seek correction of errors in defining property boundaries for property tax purposes. You further ask whether a county may provide an abatement beyond the two years allowed by statute. I will address your questions as they are presented.

There is no statutory provision imposing responsibility for discovering errors in defining property boundaries. North Dakota Century Code (N.D.C.C.) chapter 57-14 contains provisions regarding the correction of assessments for incorrectly defined property, but does not impose responsibility for discovering those errors. The statute merely states that once a county auditor discovers an error, the auditor shall proceed to correct the assessment. N.D.C.C. § 57-14-01; See also 1998 N.D. Op. Att'y Gen. 13 (Jan. 16 op. to John Goff). Therefore, it is my opinion the North Dakota Century Code does not place the responsibility to discover errors in defining property boundaries on any particular person. However, it is my further opinion that once an error has been discovered and brought to the attention of the county auditor, it is the county auditor's responsibility to proceed with the necessary actions to correct the assessment.

Your second question involves the abatement of property taxes. Abatement and refund of property taxes under N.D.C.C. ch. 57-23 is the only method by which a property owner may recover incorrectly assessed and paid property taxes. See N.D.C.C. § 57-23-01. In order to obtain an abatement or refund of incorrectly paid property taxes, a property owner must apply for an abatement or refund "on or before November first of the year following the year in which the tax becomes delinquent . . . ." N.D.C.C. § 57-23-04. The North Dakota Supreme Court has construed this language to indicate that in order to have incorrectly paid 1992 property taxes abated or refunded, the

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property owner must have filed an application on or before November 1, 1994. Trollwood Village Ltd. Partnership v. Cass County Bd. of County Comm'rs., 557 N.W.2d 732, 737 (N.D. 1996).

Thus, a property owner has almost two years to apply for an abatement and refund of incorrectly paid property taxes. There are no other statutory provisions that allow a county to abate and refund property taxes. Since county commissioners may only exercise those powers expressly granted by or reasonably implied from applicable statutes, a county may not abate or refund taxes outside this approximately two-year period, and may not correct an error in any other manner. See Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924). Accordingly, it is my opinion that a county may not provide an abatement or refund for property taxes if the application is made after November first of the year following the year in which the taxes become delinquent.

Sincerely,

Heidi Heitkamp  
Attorney General

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