

OPINION
65-338

September 15, 1965 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Assessments - Reassessments

This is in response to your request for an opinion on the following questions:

QUESTION NO. 1. When the tax commissioner orders a reassessment, does he also appoint the special assessor or must the special assessor be appointed by the board of county commissioners?

QUESTION NO. 2. Must the special assessor provided for in subsection 2 of section 57-14-08 be a resident of the township, city, village or other assessment district for which a reassessment is ordered?"

QUESTION NO. 3. If the special assessor does not have to be a resident of the assessment district for which a reassessment is ordered and if the tax commissioner can appoint the special assessor if he orders the reassessment, does the tax commissioner have authority to appoint as special assessor under section 57-14-08 one of his own employees who is trained in assessment work?

QUESTION NO. 4. If the answer to Question No. 3 is 'yes' should the employee's salary from the state tax department be reduced by the amount he received for payment out of the county treasury for his services as special assessor?"

QUESTION NO. 5. A. If the tax commissioner has authority to appoint a special assessor when he has ordered a reassessment, is the form of appointment and the order for a reassessment that was made by the tax commissioner in *Boutrous v. Thoresen* 54 N.D. 289, 291-292, 209 N.W. 558, sufficient in all respects to constitute a valid order for reassessment and appointment of the special assessor?" (Underscoring yours).

B. Is a copy of the tax commissioner's order for reassessment and of the appointment of a special assessor, if he has power to make such an appointment, required to be sent to such boards and officials as the board of county commissioners, the county auditor, the governing body of the taxing district for which the reassessment is ordered, and the assessor of such district?"

QUESTION NO. 6. Is a special assessor under section 57-14-08 entitled to reimbursement for expenses incurred for meals and

lodging while performing his duties as special assessor?"

The powers and duties of the tax commissioner are set forth in section 57-01-02 of the North Dakota Century Code. Subsection 7 thereof provides as follows:

7. May require a reassessment of property in any county to be made in accordance with chapter 57-14, whenever that is deemed necessary, or may require county auditors to place on the assessment rolls property which may be discovered and which has not been taxed according to law; * * *."

This subsection pertains to reassessment of property. Chapter 57-14 of the North Dakota Century Code pertains primarily to correction of assessments and reassessments by action through the county commissioners.

Section 57-14-08 of the North Dakota Century Code provides that a reassessment may be as follows. Subsection 1 thereof is concerned primarily with the manner in which the county commissioners can be required to make a reassessment. Subsections 2 and 3 are quoted as follows:

2. The board of county commissioners then may appoint some competent citizen as a special assessor who shall make a reassessment of the property specified by the board, and who shall proceed in accordance with the provisions of law governing assessors. Such special assessor shall be allowed for his services a sum not to exceed ten dollars per day plus, in the discretion of the board of county commissioner, mileage expense at the rate allowed by law for each mile actually and necessarily traveled in the performance of his duties, which shall be audited and allowed by the board of county commissioners and paid out of the county treasury upon warrant of the county auditor. If assessment was ordered by the tax commissioner, such commissioner shall audit and allow the bill, and the same shall be paid out of the county treasury. In either case, such compensation shall be charged to the political subdivision in which such reassessment was made and shall be deducted by the county treasurer from funds coming into his hands apportionable to such subdivision;
3. Upon completion of the reassessment, the assessor shall certify the same to the county auditor, who forthwith shall call a special meeting of the board of county commissioners to be held not more than thirty days from the time of making such call. A notice of such special meeting and the purpose thereof shall be published at least once in the official paper of the county not less than one week prior to such meeting * * * *." (Emphasis supplied).

In attempting to apply the provisions of subsection 7 of section 57-01-02, we find no substantive provisions in Chapter 57-14, to which reference is made pertaining to the tax commissioner and the appointment of special assessors, except the underscored language in subsection 2 quoted above. Nevertheless, subsection 7 makes clear

reference to Chapter 57-14. The language by itself is ambiguous and in our opinion resort to the session laws as the source of the law is necessary to determine full meaning to the language referred to above. We are not confronted here with a situation where the language is clear nor is this a situation where resort to the source of the law would give rise to an ambiguity, but resort to the source of the law is required to clear up the ambiguous language and to fill the voids which clearly appear upon the surface of the statutes.

Section 57-01-02 has its source in Chapter 213 of the 1919 Session Laws. At the time of its enactment it was Senate Bill No. 67, which was subsequently referred to the electorate and approved in a special election held on June 26, 1919. Under the provisions of Section 5, (1), the following powers and duties were given to the tax commissioner:

* * * * Appoint a special assessor and deputies under him, and cause to be made in any year a reassessment of all or any real and personal property or other subjects or objects of taxation, in any assessment district, when in his judgement such reassessment is desirable or necessary to the end that any or all such property or other subjects or objects of taxation in such districts shall be assessed equally as compared with like property or other subjects or objects of taxation in the county wherein such district is situated; * * * * provided, that he may appoint as such special assessor any county supervisor of assessment; * * * * ."

Chapter 213 remained unchanged until the code revisors codified same into the 1943 Code. It appears as Chapter 57-01 in the 1943 Code. Most of the original language was deleted. The revisors' notes merely state the same was "revised in form for brevity." There was no change in the language from the 1943 Code to the 1960 North Dakota Century Code.

In 1925 the Legislature enacted Chapter 198 pertaining to correction of assessments of property. This act set out the procedures for making reassessments under certain conditions. The act in question was Chapter 198 of the 1925 Session Laws, which was passed by a simple majority. While the subject matter of Chapter 198 of the 1925 Session Laws is somewhat related to the provisions of Chapter 213 of the 1919 Session Laws, it did not amend or repeal Chapter 213. (Boutrous v. Thoreson, 54 N.D. 289; 209 N.W. 558.) The 1925 Act (Chapter 198) was a separate act and could operate separately and was merely supplemental to the 1919 Act, (Chapter 213). It has been clearly established in the above cited case that the 1919 Act was still in full force and effect in 1926. No amendment to said act has been affected except by the code revisors.

The 1925 Act, (Chapter 198), upon being codified became Chapter 57-14 of the North Dakota Revised Code of 1943 and has the same designation in the Century Code. Almost all of the provisions of Chapter 198 of the 1925 Session Laws pertains to the duties of the county commissioners on reassessment, except that portion which provides that "* * * * if the reassessment was ordered by the tax commissioner."

The quoted provision of Chapter 198, which is now Chapter 57-14 of the North Dakota Century Code, relates back to Chapter 213 of the 1919 Session Laws and takes a more comprehensive meaning by applying the provisions of Chapter 213 of the 1919 Session Laws which was in effect at the time of the adoption of Chapter 198 of the 1925 Session Laws. By correlating these chapters, sensible meaning can be derived from subsection 7 of section 57-01-02 and section 57-14-08, subsection 2, quoted herein.

Under the specific conditions that we have here it is not necessary to go into academic legal concepts and theories as to the net result of a recodification and a republication of a code, or as to the authority of the codifiers, republishers and the legal effect of a republication or recodification.

In examining the provisions of subsection 2 of section 57-14-08 of the North Dakota Century Code, which in part provides that
"* * * * if the assessment was ordered by the tax commissioner * * * *".

Thus, in direct response to Question No. 1, it is our opinion that the tax commissioner has the authority to appoint a special assessor when he orders a reassessment.

As to Question No. 2, the language, "* * * * may appoint some competent citizen * * * *", as found in Chapter 213 of the 1925 Session Laws, which is now subsection 2 of section 57-14-08 of the North Dakota Century Code, refers to the appointment made or to be made by the county commissioners. However, in referring to Chapter 198 of the 1919 Session Laws we find the following provision in connection with the appointment of assessors by the tax commissioner, "* * * * provided that he may appoint as such special assessor any county supervisor of assessments * * * * such assessor shall certify to and file the same with the county auditor * * * *." This language implies that the special assessor to be appointed by the tax commissioner must be a supervisor of assessments of the county wherein the property is located. The provisions of Chapter 213 of the 1919 Session Laws and the provisions of Chapter 198 of the 1925 Session Laws, (the latter changes what is now Chapter 57-14 of the North Dakota Century Code), clearly indicate that the special assessor appointed should be from the county in which the property is located.

A preliminary research did not disclose when the office of county supervisor of assessments was created and abolished - if it was created. The Legislature recently in enacting the provisions of section 11-10-02.2 created the office of county supervisor of assessments. However, it does not appear that this is the same office which was contemplated by the provisions of Chapter 213. Neither does it appear that Chapter 213 had in mind the office created under section 11-10-02.2. In keeping with the spirit of law in its original form and the related statutes, it would appear that the special assessor should be a citizen of the state and a resident of the county in which the property is located.

In response to Question No. 2, it is our opinion that the special assessor to be appointed by the tax commissioner must be a citizen of

the state and a resident of the county in which the property involved is located. He need not necessarily be a resident of the assessment district.

As to Question No. 3, because of the answer given to Question No. 2, it is not necessary to answer this question.

As to Question No. 4, because of the previous answers it is not necessary to answer this question.

As to Question No. 5.(A), the form which was used by the tax commissioner in the case reported in *Boutrous v. Thoresen*, *Supra*, would be adequate.

As to Question No. 5.(B), copies should be sent to county commissioners, county auditors, city governing bodies and/or governing bodies of the assessment districts in which the property is located. In addition thereto, upon the return of the special assessors' listings, a notice of a meeting for grievances should be made in such a letter and the meeting should be held at such a time so as to satisfy the requirements of section 57-14-08 and Chapter 213 of the 1919 Session Laws. We believe this is necessary because of the *Boutrous v. Thoresen* decision, *Supra*.

As to Question No. 6, the special assessor would be entitled to meals and lodging while performing his duties away from his home, which reimbursement would be in addition to the per diem allowance.

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