

**OPINION**  
**65-373**

June 3, 1965 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Increased Assessment - Notice

This is in reply to your letter of 28 May 1965 in regard to the interpretation of Senate Bill No. 198 as enacted into law at the last session of the Legislation Assembly.

You quote the enactment as follows:

TLE: "To provide written notice to the real estate owner by the assessor that his assessment has been increased."

ODY: "SECTION 1. WRITTEN NOTICE OF INCREASED ASSESSMENT TO REAL ESTATE OWNER. When any assessor or county board of equalization has increased the assessed valuation of any lot or tract of land by more than fifteen percent of the last assessment on any lot or tract of real estate on which no taxable improvements had been made since the last assessment of it, written notice of the amount of increase over the last assessment and the amount of the last assessment shall be given by him to the property owner at his last know address. The tax commissioner shall prescribe suitable forms for this notice and such notice shall be mailed at county expense."

We think consideration of this statute also requires consideration of related statutes. Thus we note that section 57-09-04 of the North Dakota Century Code in regard to township boards of equalization provides in part:

\* \* \* The assessment of the property of any person shall not be raised until such person shall have been notified of the intent of the board to raise the same.\* \* \*"

Section 57-10-03-provides in regard to action by the village board of equalization in part:

\* \* \* An assessment of property shall not be raised until the owner shall have been notified of the intent of the board to raise the same.\* \* \*"

Section 57-11-03 of the North Dakota Century Code in regard to city boards of equalization provides insofar as here applicable:

\* \* \* except that the valuation of any property returned by the assessor shall not be increased more than twenty-five percent

without first giving the owner or his agent notice of the intention of the board to increase it.\* \* \*

You point out that the county board of equalization can increase individual assessments, and assessments on specific tracts of property, and also that they can increase assessments by raising the aggregate assessment on a particular class of real estate within a taxing district so as to equalize it with the similar class of real estate in other assessment districts. You point out that in the latter case, the effect can well be that the assessments of individual tracts of real estate are increased by more than fifteen percent.

Your first question is stated as follows: "whether each real estate property owner must be given notice by the county board of equalization in the case where the assessment on any tract of real estate assessed to him has been increased more than fifteen percent because the classification of real estate in which the particular tract was assessed was increased more than fifteen percent for all property owners having property within that classification."

We note no exception in the statute as to how the increase in the assessment is accomplished. By the terms of the statute if the effect of the action by the county board of equalization is to increase the assessment more than fifteen percent, the property owner is to be notified.

Your last question is stated as: "\* \* \* whether the county board of equalization will have to give written notice to the real estate owner in any case where the real estate owner's current assessment is increased by the assessor over his last assessment by less than fifteen percent and is also increased by the county board of equalization by less than fifteen percent, but the combination of the two increases, one by the assessor and one by the board, results in a total increase over his last assessment of more than fifteen percent."

The construction of this statute raised by your question presents intriguing possibilities. To look at it in the worst possible light, it would be conceivable that the assessor could raise the last year's assessment by fourteen percent, the city board of equalization could raise that by twenty-four percent and the county board of equalization could raise that again by fourteen percent, all without notice to the landowner concerned. To take another possibility, under that construction the assessor could reduce that last assessment by fifty percent, the township board could again reduce it by fifty percent, and then a raise of sixteen percent of the last assessment by the county board of equalization would require notice to the property owner.

We believe such a construction would not only be impracticable, but would ignore the precise language of the Act. As your letter points out the county board of equalization can increase the valuation of property, either by classification or individually, it can likewise reduce valuation either individually or by classes and it can of course stand on the equalization by a lower board or on the assessor's valuation. We believe that Senate Bill No. 198 must be

applied to the effective action of the county board of equalization. Thus if the effect of the county board's equalization, whether such equalization process involves lowering, raising or standing on the assessed valuation sent to it by the lower board or the assessor, is to increase the assessed valuation of any lot or tract of land by more than fifteen percent of the last assessment on any lot or tract of land it is our opinion that the notice required by the statute must given.

The meaning of this phrase "last assessment" as used in the statute can be clarified a bit by examination of the bill as originally introduced. As originally introduced the bill used the phrase "equalized assessed valuation of the previous year." Quite a bit of difficulty might have arisen in applying same during odd-numbered years since as provided in section 57-02-11 subsection 1 of the North Dakota Century Code, "All real property subject to taxation shall be listed and assessed every odd-numbered year with reference to its value, on April first of that year, and shall not be reassessed in the following year, except by order of the board of county commissioners or tax commissioner.\* \* \*" The phrase "last assessment" would logically refer to the assessment made during the last odd-numbered year, or assessments made by order of the county commissioners or tax commissioner whichever is applicable.

HELGI JOHANNESON

Attorney General