

**OPINION
69-468**

July 28, 1969 (OPINION)

Honorable Arne Dahl

Commissioner of Agriculture

RE: Taxation - Personal Property Tax Repeal - Predatory Animal Levy

This is in reply to your letter of July 17, 1969, relative to section 26-16-06 of the North Dakota Century Code. You note that under this section Stark County is currently exercising the special tax levy to finance predatory animal control and Oliver County has expressed interest in utilizing this special levy for this purpose. You further note a question has arisen regarding the repeal of the personal property tax and its effect on the above procedure to finance predatory animal control by counties. You ask for our opinion as to the status and application of section 20-16-06 in view of the repeal of the personal property tax.

Section 20-16-06 of the North Dakota Century Code provides:

TAX LEVY ON SHEEP FOR PREDATORY ANIMAL FUND. The board of county commissioners shall, when petitioned by persons owning a majority of the sheep on the assessment rolls of said county, levy a special tax upon the sheep of said county, not to exceed ten cents per head, this tax to be assessed and collected in the same manner and at the same time as is now, or may hereafter be prescribed by law for the assessment and collection of personal property taxes. The entire fund derived from such levies shall be expended only for predatory animal control, and shall remain available until expended."

As you have noted in your letter, the 1969 Legislature provided that all personal property not required by section 179 of the North Dakota Constitution to be assessed by the State Board of Equalization is to be exempt from assessment and taxation in the year 1970 and such property shall not be assessed or taxed for that year or for any year thereafter. See section 57-02-08(25) of the North Dakota Century Code, as amended. Sheep are not required to be assessed by the State Board of Equalization under the provisions of section 179 of the North Dakota Constitution. Since, of course, personal property, including sheep, are not exempt from assessment and taxation until 1970, the tax provided for in section 20-16-06 may be levied for 1969 as provided in said section.

However, the enactment of the provision that personal property, such as sheep, shall not be assessed nor personal property taxes levied against personal property in the year 1970 or for any year thereafter does raise serious problems for years subsequent to 1969. These problems are twofold: First, we would note that section 20-16-06 provides that before the tax may be levied the county commissioners must be petitioned by persons owning a majority of the sheep on the assessment rolls of the county. Since the sheep will not be assessed in 1970 or subsequent years it would obviously be almost impossible

for the county commissioners to determine whether they had been petitioned by persons owning a majority of the sheep on the assessment rolls of the county. Secondly, the statutes provide the tax, when levied, is to be assessed and collected in the same manner and at the same time as may be prescribed by law for the assessment and collection of personal property taxes. As noted above, there will be no assessment and collection of personal property taxes for the year 1970 and succeeding years. However, the statutes providing the procedure for such assessment and collection have not been repealed and this would not be an insurmountable obstacle of itself.

Since section 20-16-06 permits the levy of the tax on sheep for predatory animal control only in those instances when the county commissioners have been petitioned for same by persons owning a majority of the sheep on the assessment rolls of said county and since, for the year 1970 and subsequent years, there will be no such assessment, thus making such a determination by the county commissioners almost impossible, it is our opinion that such tax may not be assessed and collected for the year 1970 and subsequent years.

HELGI JOHANNESON

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