

**OPINION
73-501**

May 23, 1973 (OPINION)

Mr. Thomas F. Kelsch
Burleigh County States Attorney
Bismarck, ND 58501

Dear Mr. Kelsch:

This is in answer to your letter of April 17, 1973, requesting my opinion on the question of whether each application for abatement of general property taxes and assessments filed under chapter 57-23, of the North Dakota Century Code, must have endorsed on it the recommendation of the governing body of the municipality in which the property described in the abatement application is located.

While you state you feel that the county has the right to obtain the recommendation of the governing body of the municipality on such abatement applications, you enclosed a copy of the Bismarck City Attorney's opinion of January 22, 1973, which answered the Bismarck City Assessor's inquiry of January 19, 1973, by advising that the recommendation of the Bismarck City Commission does not have to be endorsed on them.

It is my opinion that the legislative history of the statutes involved, particularly section 57-11-06 and 57-23-06, show a legislative intention that the governing body of the municipality is required by law to endorse its recommendation on an abatement application for general property taxes that relates to property located in the municipality.

Before setting out the rather lengthy examination that follows of the statutes involved, it is noted first that the reference to "section 57-02-06" on the second page of your letter and the reference to the same section and quotation from it on the first page of the Bismarck City Assessor's letter to the Bismarck City Attorney are both in error and that the reference undoubtedly should have been to "section 57-23-06".

Chapter 57-11, North Dakota Century Code, provides for a board of equalization in each city and the duties of it. Section 57-11-06 of that chapter is as follows:

"57-11-06. NO REDUCTION AFTER SESSION OF BOARD - EXCEPTION.
After the adjournment of the board each year, neither the governing body of the city nor the city board of equalization shall change or alter any assessment. Neither shall the governing body or the board of equalization reduce or abate, or authorize the reduction, abatement, or return, of any taxes levied upon such assessments for any cause except that the property assessed was not subject to taxation at the time the assessment was made."

Section 57-11-06 appeared in the Compiled Laws of 1913 as the last sentence of section 3645, which sentence was as follows:

"After the adjournment of said board of equalization in each year, neither it nor the city council shall change or alter, or recommend the changing or alteration of any assessment or assessments to the county commissioners, or otherwise; and neither said city council nor said board of equalization shall reduce or rebate or authorize the reduction or abatement or rebatement of any taxes levied upon such assessments for any cause, excepting that the property assessed was not subject to taxation at the time such assessment was levied."

It is clear that the provision quoted from section 3645 of the Compiled Laws of 1913 expressly prohibited both the city board of equalization and the city council from recommending any change in an assessment to the board of county commissioners after the city board of equalization had adjourned.

The Compiled Laws of 1913 also included section 2165, which was the law authorizing the board of county commissioners to abate property taxes and which read as follows:

"Section 2165. ABATEMENT OF TAXES, HOW MADE. The board of county commissioners may, upon affidavit or other evidence, when satisfied beyond a doubt as to the illegality or unjustness of the assessment or in case of error, abate taxes whether real or personal. Full record of such abatement must be made, showing the reason for their action and the county auditor shall certify such abatement to the county treasurer, who shall enter such facts opposite the tax so abated, which shall have the effect of discharging such tax. And whenever taxes on any real estate remain unpaid and such property has not been sold to any purchaser other than the county, by reason of depreciation in value or other cause, the board of county commissioners may compromise with the owner of such property by abating a portion of such delinquent taxes on payment of the remainder. The county auditor shall also make out a certified statement of the amount of state taxes so abated, which statement shall be forwarded to the state auditor, who shall give the county credit for the amount so abated."

It is evident that there is no conflict between section 2165, Compiled Laws, 1913, immediately above, and the part of section 3645, Compiled Laws, 1913, that is also quoted above.

Chapter 227, Session Laws 1917, amended sections 2165 and 3646 of the Compiled Laws of 1913 to read as follows:

"Section 2165. ABATEMENT OF TAXES, HOW MADE. The board of county commissioners may, upon application and affidavit or other evidence, when satisfied beyond a doubt as to the illegality or unjustness of the assessment, or in case of error, abate in whole or in part taxes, whether real or personal;

!mfla (1) Provided, however, that application therefor shall be submitted to it with a statement of the facts in the case, but no reduction, abatement or refundment of any special assessment

made or levied by any municipality for local improvements shall be made unless it is also approved by the board of review or similar taxing authority of such municipality, and (2) provided further, that before any abatement or reduction of any assessment of taxes shall be made, the application and all records, or a certified copy thereof shall be filed with the tax commission, and such abatement or reduction shall also receive favorable action by said tax commission.

"Full record of such abatement must be made, showing the reason for their action, and the county auditor shall certify such abatement to the county treasurer who shall enter such facts opposite the tax so abated, which shall have the effect of discharging the amount of tax so abated. And whenever taxes on any real estate remain unpaid and such property has not been sold to any purchaser other than the county, by reason of depreciation in value or other cause, the board of county commissioners may compromise with the owner of such property by abating a portion of such delinquent taxes on payment of the remainder. The county auditor shall make out a certified statement of the amount of state taxes so abated which statement shall be forwarded to the state auditor, who shall give the county credit for the amount so abated."

"Section 3646. DUTY OF CITY AUDITOR. Within ten days after the completion of the equalization of the assessment as herein provided, the city auditor shall deliver the same to the county auditor of the county in which such city is situated, with his certificate that the same is correct as equalized by said board of equalization, and the same shall be accepted by the board of county commissioners of such county in lieu of all other assessment rolls for said property in said city, and the board of equalization of such county may increase or diminish the valuation therein placed on any class of property so as to make such valuation uniform with the valuation of the same class of property throughout such county, but no individual assessment shall be otherwise changed, except upon compliance with section 2165 of this Code, and a failure of any county or city board of equalization to hold its meetings, shall not vitiate or invalidate any assessment or tax except as to the excess of valuation, or tax thereon, shown to have been unjustly made or levied." (underlining added)

The above quoted section 3646, as amended by the 1917 Act, is one of the sources of sections 57-11-02 and 57-11-07, which relate to the city board of equalization. The only change made in section 3646 by the 1917 amendment was the addition of the underlined words "except upon compliance with section 2165 of this Code." Section 2165 as also amended by the 1917 Act and quoted above provided that the board of county commissioners could not abate a special assessment of a municipality for local improvements unless it was "also approved by the board of review or similar taxing authority of such municipality." But no requirement was added by the 1917 Act for the city to recommend, approve, or take any action on abatement applications for general property taxes and assessments; therefore the provision quoted above from section 3645, Compiled Laws, 1913, prohibiting the city from doing so continued to apply. No further

changes in those laws were made until 1931.

In 1931 the legislature enacted a comprehensive tax abatement law, chapter 276, Session Laws, 1931, which also repealed section 2165, Compiled Laws, 1913, as amended by chapter 227, Session Laws, 1917.

That 1931 law had nine sections and is the basic source of the present abatement law, chapter 57-23, North Dakota Century Code. Section 3 of the 1931 law is the source of section 57-23-06, North Dakota Century Code, and it reads as follows:

"Section 3. FILING OF APPLICATION, ACTION THEREON, RECORD THEREOF. Upon receipt of any such application the county auditor shall note the date thereon and file the same, and he shall present the application to the board of county commissioners at its next regular meeting. The board shall, by a majority vote, either approve or reject the application, in whole or in part. If rejected, a statement of the reasons for such rejection, signed by the chairman of the board, shall be attached to the application. Before the board takes final action it may permit or require the production of additional evidence and the amendment of the application. Provided, however, that no reduction, abatement, or refundment of any special assessment made or levied by any municipality for local improvements shall be made unless the application is also approved by the governing body of the municipality in which the property assessed for such special assessment is situated; and provided further that in all other cases the recommendation of the governing body of the municipality in which such assessed property is located shall be endorsed upon, or attached to every application for abatement, reduction, or refundment of taxes and such recommendation shall be given due and fair consideration by the board of county commissioners. Any application for abatement or refund of taxes approved by the board of county commissioners shall be effective when approved by the State Tax Commissioner." (Underlining added)

This section 3 of the 1931 abatement law continued the provision that was added by the 1971 Act to section 2165, which required that application for abatement of special assessments for local improvements be approved by the municipality before being approved by the board of county commissioners; and the underlined language in this section required, for the first time, that an abatement application for general property taxes have the recommendation of the governing body of the municipality endorsed on it.

This clearly conflicted with and had the effect of repealing the provision in section 3645, Compiled Laws, 1913, supra, the source of section 57-11-06, which prohibited a city board of equalization after adjournment and the city council from recommending to the county commissioners the changing or alteration of any assessment.

NOTE: PAGE 6 WAS MISSING FROM THE ATTORNEY GENERAL'S OPINION BOUND BOOK USED FOR TEXT INPUT.

approved by the governing body of the municipality which made them before they could be approved by the board of county commissioners,

and, second, that even though the local governing body of a municipality continued to be prohibited, after adjournment of its equalization board, from reducing, abating or authorizing the abatement of a general property tax or assessment, it nevertheless was required by section 57-2306 to endorse its recommendations to the county commissioners on such an abatement application. Also, see the Attorney General's opinion of February 5, 1935, pages 273-274 of the Report of the Attorney General, July 1, 1934, to June 30, 1936.

Because the 1943 Code Revision Commission in its Revisor's Note to section 57-1106 stated that it had conformed the language of section 3645, Compiled Laws 1913, to section 3 of chapter 276, Session Laws, 1931 (section 57-2306), it is apparent that the word "authorize" as used in section 57-1106 by the Code Revisors was not intended to mean "recommend", since the Code Revisors, by stating their intention to make no change in the meaning of section 3, chapter 276, Session Laws 1931, in codifying that provision into section 57-2306 thereby intended to preserve the requirement that the governing body of a municipality endorse its recommendation on an abatement application for general property taxes and assessments.

The rule is well established that -

" * * * where a general statutory revision has been made resulting in the alteration of phraseology the change in phraseology will be construed as altering the law unless it is clearly appeared that there was a legislative intent so to do and in ascertaining such intention reference may be had to the prior statute."

Northwestern Improvement Co. v. Norris (N.D. 1956), 74 N.W.2d. 497 at 503.

Where a general statutory revision has been made, such as the North Dakota Revised Code of 1943, the Revisor's notes stating that no change in meaning was intended by a change in phraseology in the revised statute will be given weight by the courts. See Chester v. Einarson, 76 N.D. 205 at 221, 34 N.W.2d. 418; State v. Tjaden (N.D. 1955), 69 N.W.2d. 272 at 281.

The sentences quoted above as codified into section 57-2306, North Dakota Revised Code 1943 and which provide for approval by the municipality of abatements and special assessments and for recommendations by the municipality on abatements of general property taxes were continued without change into section 57-23-06, North Dakota Century Code. Section 2, chapter 398, Session Laws 1965, amended section 57-23-06 by adding at the end of the first two sentences the underlined language in the following quotation of that sentence:

"Any abatement or refund of any special assessment must be approved by the governing body of the municipality in which the special assessment was made and such abatement or refund shall be effective when approved by the board of county commissioners."

This entire sentence in section 57-23-06 as amended in 1965 was,

however, apparently impliedly repealed by another statute enacted by the same 1965 legislative assembly after it had enacted chapter 398. That statute was section 6 of chapter 289, Session Laws 1965, which amended section 40-24-16, North Dakota Century Code, by adding to that section, so far as pertinent here, the following sentence:

"Special assessments shall not be subject to abatement or refund by proceedings under chapter 57-23, but shall be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26."

It is not, however, necessary to decide for the purposes of this opinion whether or not this sentence in section 57-23-06 relating to abatement of special assessments was repealed by the 1965 amendment to section 40-24-16, since, as has been shown, it relates to an entirely different matter than the sentence following it which requires that abatement applications for general property taxes shall have endorsed on them the recommendation of the governing body of the municipality in which the property is located. As recognized in the Attorney General's opinion of February 5, 1935, already referred to, the reason for the provision for such a recommendation

" * * * was undoubtedly for the purpose of informing the municipality that might be affected by the proposed abatement or refund of the application and that the municipality might not be deprived of its taxes without at least having an opportunity to be heard in the matter."

Yours very truly,

Allen I. Olson

Attorney General