

**OPINION
74-167**

April 4, 1974 (OPINION)

Mr. John O. Garaas
State's Attorney
Cass County
Fargo, ND 58102

Dear Mr. Garaas:

This is in reply to your letter of February 26, 1974, asking for my opinion on the question of whether the Board of County Commissioners of Cass County has authority to employ assistants on behalf of the county to help a special assessor make a reassessment ordered by the board pursuant to section 57-14-08 of the North Dakota Century Code.

You advise that the Board of County Commissioners has ordered a reassessment of Barnes Township in Cass County and that it will require at least three full-time assessors at the very minimum to complete the reassessment prior to the deadline of this fall, 1974. Your question is whether the special assessor can have assistants who would be paid reasonable salaries by the county in addition to the \$40 per day that may be paid to the special assessor.

My understanding is that Barnes Township, which adjoins the City of Fargo, on its west boundary, has a large amount of commercial development, including a large shopping center, and that one person acting as special assessor could not alone do an adequate job of reassessing the township within the time available.

Subsection 1 of section 57-14-08 of the North Dakota Century Code provides that a board of county commissioners may order a reassessment of any class of property or of all property in any political subdivision, "if, in its opinion, taxable property located within such subdivision has escaped assessment in whole or in part, or has been assessed unfairly, or has not been assessed according to law."

Subsection 2 of section 57-14-08 provides as follows:

"The board of county commissioners then may appoint some competent citizen of this state 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 forty dollars per day plus, in the discretion of the board of county commissioners, 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 the reassessment was ordered by the tax commissioner, such commissioner shall appoint some competent citizen of this state as a special assessor who shall make a reassessment of the property specified by the

commissioner and who shall proceed in accordance with the provisions of law governing assessors. The 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;"

The above quoted subsection does not include any express authority or power in the board of county commissioners or in anyone else to hire other persons to assist the special assessor and to pay them out of public funds in addition to the amount paid to the special assessor for his services. No other provision of law has been found which provides any such express authority. A county or other political subdivision of the state has only such powers as have been expressly conferred upon it or that are implied because "reasonably necessary to enable it to exercise and perform those powers and duties which are expressly granted to and imposed upon it", *Murphy v. Swanson*, 50 N.D. 788 at 796-797, 198 N.W. 116 at 119 (N.D. 1924). If authority or power to hire and pay assistants to help the special assessor exists, then it exists as an implied power that is necessary to carry out the express power vested in the special assessor by section 57-14-08(2) to make the reassessment.

For the reasons hereinafter set out, it is my opinion that in the circumstances described in your letter the board of county commissioners does have the implied power to determine that other persons may be employed to assist the special assessor, the number that may be employed, and the amount of compensation they shall receive and that such compensation shall be paid to them by the county in addition to the amount paid to the special assessor for his services.

While the special assessor provided for in section 57-14-08 is empowered by that section to make the reassessment ordered by the board of county commissioners, neither that section nor any other provision confers on him and express power to enter into a contract of any kind on behalf of the county. It therefore follows that the special assessor has no power, express or implied, to contract on behalf of the county for the services of any persons who might be employed to assist him in making the reassessment. 20 C.J.S. Counties, Section 175, *Speer v. Kratzenstein*, 12 N.W.2d. 360 at 365 (Neb. 1943). Also see *Clare v. Curran*, 159 A. 835 (R. I. 1932).

Among the general duties of a board of county commissioners is that of superintending the fiscal affairs of the county - section 11-11-11(1). It has power to contract on behalf of the county in order to carry out the powers given it in Chapter 11-11 N.D.C.C. and elsewhere, including the power given in section 11-11-14(14) "To do and perform such duties as are prescribed by law." "County commissioners are vested with the general management of the fiscal affairs of the county. N.D. Constitution Section 172; * * * " *Trall County v. Moackrud*, 65 N.D. 615 at 620, 260 N.W. 821 at 823. Also see *Murphy v. Swanson*, 50 N.D. 788 at 798, 198 N.W. 116 at 120.

A board of county commissioners has express authority under section 57-14-08(1) to order a reassessment of property in a political

subdivision if it believes taxable property in the subdivision has escaped assessment in whole or in part or has been assessed unfairly or not according to law. It has the express authority and the duty under section 57-14-08(2) to appoint a special assessor to make any reassessment that it has ordered.

Since the special assessor is the officer designated by the law in section 57-14-08(2) to make a reassessment, only he can make it. *Farrington v. The New England Investment Co.*, 1 N.D. 102 at 112-113, 45 N.W. 191 at 194-195. The board of county commissioners therefore cannot employ persons to make the reassessment independently of the special assessor. *Murphy v. Swanson*, 50 N.D. 788, 198 N.W. 116. But the board can employ persons on behalf of the county to assist the special assessor to make the reassessment if it is necessary for the special assessor to have assistance in order for him to perform the duty of making the reassessment which the law charges him with -

"* * * for where a statute or constitutional provision grants a specific power or imposes a definite duty, it also, in absence of a limitation, by implication confers authority to employ all the means that are usually employed and that are necessary to the exercise of the power conferred or to the performance of the duty imposed." *State v. Jones*, 74 N.D. 465, 23 N.W.2d. 54 at 70."

In the case of a reassessment under section 57-14-08, there is no limitation in that statute or elsewhere which would prohibit the special assessor from having other persons assist him, provided that he does not delegate his authority to actually make the assessments to them. There is likewise no limitation in the law that we can find which prohibits the board of county commissioners from contracting on behalf of the county to hire assistants to help the special assessor once the board has exercised both its authority to order a reassessment and to appoint a special assessor. "A county board must necessarily possess an authority commensurate with its public trust and duties." *Speer v. Kratzenstein*, 12 N.W.2d. 360 at 364-365 (Neb. 1943). Also see *Womer v. Aldridge*, 125 P. 2d. 392 (Kan. 1942).

If a board of county commissioners satisfies itself that property in a political subdivision is unfairly assessed or not assessed according to law, its authority under section 57-14-08 to order a reassessment and appoint a special assessor to make the reassessment would become a nullity if the amount of property to be reassessed is so great that a special assessor by himself could not complete the reassessment in sufficient time for the special board of equalization to review it as provided in section 57-14-08(3) and the county auditor to make out the tax lists as required by section 57-20-02 and deliver them to the county treasurer by December 15 as provided in section 57-20-06.

Section 176 of the State Constitution requires taxes to be uniform upon the same class of property within the territorial limits of the authority levying the tax. The legislature by enactment of section 57-02-27 has in effect placed all taxable property in one class (with one possible exception not pertinent here) with the result that under the constitutional mandate the taxes levied by a taxing authority must be uniform on all taxable property within the territorial limits

of that taxing authority. To the extent that taxable property has been unfairly (not uniformly) assessed within a political subdivision, the taxes levied on the taxable property will not be uniform and will be violative of the uniformity requirement of section 176 and section 57-02-27.

It seems clear that the legislative purpose in authorizing a reassessment to be made as provided in section 57-14-08 was to obtain uniformity of taxation in those political subdivision in which the board of county commissioners believes that there would not be uniformity if the original assessment became the basis for taxation.

Since the legislature, in authorizing the board of county commissioners to order a reassessment and appoint a special assessor to make the reassessment did not limit the performance of all acts necessary to make the reassessment to the special assessor alone and since in the circumstances involved here he would be unable to do it alone, it follows under *State v. Jones*, supra, that the board of county commissioners, by virtue of its express authority to order a reassessment and appoint a special assessor, has the implied authority to employ assistants to help the special assessor make the reassessment. This implied authority includes the right to contract with the assistants on behalf of the county to pay them reasonable compensation in addition to the compensation of not more than forty dollars per day authorized by section 57-14-08(2) to be paid to the special assessor. Pertinent here is the following quotation from *State ex rel Blair v. Kuhr*, 283 P. 758 at 760 (Mont., 1930), relating to the implied authority of a county board of hire assistants to aid it in its equalization functions:

"The legislature, in conformity with the requirement of the Constitution, has prescribed regulations calculated to bring about a just valuation of all the property for the purpose of taxation, and every aid and encouragement should be afforded the officers designated in the intelligent performance of this important function. Thus the authority conferred finds root in the Constitution itself."

Section 57-14-08(2) provides that the compensation paid to the special assessor shall be charged to the political subdivision in which the reassessment is made. In my opinion, this must be interpreted as also intending that compensation paid to assistants employed to help the special assessor must likewise be charged to the political subdivision because, if the township in question is unfairly assessed, then presumably the township itself could have employed one or more assistants to help the township assessor if he was unable by himself to do an adequate job of assessing the township. A township is expressly authorized by section 58-05-02 to elect an assessor or to authorize the board of township supervisors to appoint an assessor. As in the case of a county, a township possesses only those powers enumerated in the law and "those necessary to the exercise of the powers enumerated or granted" - see section 58-03-02 and *Pierce Township v. Ernie*, 74 N.D. 16 at 21, 19 N.W. 2d. 755 at 757. The authority and duty of the township to have the assessment made necessarily carries with it the implied authority to provide the means with which to have it

made.

From the standpoint of the management of the fiscal affairs of each, both the township and the county must be concerned with the constitutional requirement of uniform taxation of property as prescribed by the legislature. To the extent that the township fails in the obligation to achieve the required uniformity, the county becomes an overseer charged with the duty to have that obligation met. Appropriate here are the statements of the State Supreme Court that a township "must always be looked upon as a subdivision of a county" and that "We are satisfied that a township when once created is not merely a corporate entity, but that it is subordinate to and is a part of the general system of county management and control of the county in which it is situated". State ex rel Stevenson Township v. Nichols, 39 N.D. 4 at 6 and 7, 166 N.W. 813.

Your second question was whether the compensation of the special assessor is limited to forty dollars per day if the reassessment was ordered by the tax commissioner. You noted that the answer to it becomes important only if and when the reassessment is ordered by the board of county commissioners, the compensation of the special assessor and any assistants is limited to a total of forty dollars per day. In view of this, it is not necessary to answer your second question since the answer to your first question as set out above is that when the board of county commissioners orders the reassessment can, on behalf of the county, when it finds it necessary, pay compensation to assistants for the special assessor in addition to the maximum of forty dollars per day authorized for the special assessor.

Sincerely yours,

ALLEN I. OLSON

Attorney General