

Office of the Attorney General
State of North Dakota

Opinion No. 81-54

Date Issued: June 4, 1981

Requested by: Kent Conrad
State Tax Commissioner

--QUESTION PRESENTED--

Whether the governing body of a city, acting as the city board of equalization, may 'freeze' the 1981 assessments of platted agricultural lands within the city's limits at the amount of the 1980 assessment.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a city board of equalization may not freeze the 1981 assessments of platted agricultural lands within a city's limits at the amount of the 1980 assessment.

--ANALYSIS--

Prior to the enactment of Senate Bill No. 2323 by the 1981 Legislative Assembly, agricultural lands within a city's corporate limits, 'whether or not platted,' were treated as agricultural lands for purposes of valuation pursuant to Section 57-02-27, North Dakota Century Code. However, that section was amended by Senate Bill No. 2323 to read in relevant part as follows:

Agricultural lands within the corporate limits of a city which are not platted shall constitute agricultural property and be so classified and valued for ad valorem property tax purposes until such lands are put to another use.
[Emphasis supplied.]

Senate Bill No. 2323 also created a new subsection to Section 57-02-01, N.D.C.C., which reads as follows:

11. 'Agricultural property' means lands which are used for raising agricultural crops or grazing farm animals but shall not include platted lands.
[Emphasis supplied.]

Sections 1 and 11 of Senate Bill No. 2323 provide that the Act is to apply to all property assessments made during the year 1981 and Section 12 declares the measure to be an emergency measure.

In enacting these provisions, the Legislature has clearly indicated that beginning with the 1981 tax year, agricultural lands within the corporate limits of a city that have been platted are to be valued at their 'full and true value' as that term is defined in Section 57-02-01(4), N.D.C.C. That is, such lands are to be valued at their usual selling price at the time and place of assessment and not at their agricultural value or capitalized average annual gross return. A city governing body has no power or authority to disregard this clear legislative directive and freeze the assessments of such lands at their 1980 level. The 1980 assessment level was established pursuant to the former language of Section 57-02-27, N.D.C.C., and the de facto classification system ruled invalid by the North Dakota Supreme Court in *Soo Line Railroad Co. v. State*, 286 N.W.2d 459 (N.D. 1980).

Section 40-19-01, N.D.C.C., provides that city assessors are to assess property 'as is provided in title 57.' Once such assessments are made, the city governing body, acting as a city board of equalization, may change the assessment of any property 'as shall be reasonable and just to render taxation uniform' pursuant to Section 57-11-03, N.D.C.C. In addressing the powers of local boards of equalization, it has been said that they may only exercise such powers as are expressly granted them and such powers are to be strictly construed. See *Rapid City Area Schools v. Pennington County Auditor*, 284 N.W.2d 308 (S.D. 1979); and *Municipal University of Omaha v. County Board of Equalization*, 151 N.W.2d 924 (Neb. 1967). Freezing the assessment of platted agricultural lands would not further the uniform assessment of property but would serve only to correct what the city bodies perceive as inequities in the legislative scheme for the assessment and taxation of real property. Therefore, such action is not within the authority of the city governing body.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

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