

OPINION
48-16

June 15, 1948 (OPINION)

ASSESSMENT BOOKS

RE: Unsigned Upon Death of Assessor

This office is in receipt of your letter of June 12, in which you state that your city assessor assessed the city, all his assessor slips were properly signed, and his assessment books were made up. He was taken ill and died before he signed the certificate in the back of the assessment book. You inquire whether the assessment will be valid without such certificate or whether you will have to reassess the property of the city.

You refer to the case of Eaton v. Bennett, 10 N.D. 346 and Grand Forks County v. Fredericks, 16 N.D. 118.

Under the provisions of section 40-0903, when the assessment (in the city) is completed and on or before the first day of June each year the city assessor shall return the assessment roll to the city auditor. Nothing is said therein as to any certificate to be attached to the assessment roll.

Section 57-1101 N.D.R.C. 1943 provides for the organization of the board of equalization of the city, and section 57-1102 provides among other things that the city auditor shall within ten days after completion of the equalization of the assessment deliver the same as equalized to the county auditor with his certificate that the assessments are correct as equalized by the board of equalization.

Section 57-0905 N.D.R.C. 1943 relates to assessors of townships and provides for verification by affidavit the form of which is set out in said statute. You will note that the same refers to the township board of equalization, but, as I have pointed out, no such certificate or return seems to be prescribed for city and village assessors. The case of Eaton V. Bennett, 10 N.D. 346, referred to in your letter, deals with section 1551 of the territorial code of 1887. The question involved was the assessment in a township. However, said section 1551 has been materially changed several times. It appears in a changed form as section 1525 of the Revised Code of North Dakota for 1905. It now appears as part of section 57-0906 N.D.R.C. 1943 and is in the chapter dealing with township assessment, township boards of equalization, and in the form of the affidavit refers particularly to the township board of equalization.

The case of Eaton v. Bennett, supra, has been criticized several times by our Supreme Court. See Graham v. Realty Company, 22 N.D. 423; also Nind v. Meyers, 15 N.D. 400. Referring to the situation in the city of Linton, the assessor had completed the assessment in detail and nothing was left to be done by him except to sign the certificate in the back of the assessment book. This certificate has been placed in the back of the assessor's books in accordance with a practice that has been pursued for many years and undoubtedly this certificate should be signed by assessors in townships, as provided

by section 57-0906. It is very doubtful, however, that this would apply to cities.

However, the city assessor at Linton died before signing the certificate in the assessor's book. There is a vacancy in that office, therefore, in the city of Linton and I know of no reason why an assessor could not be appointed to fill the vacancy. An assessor so appointed could inspect and examine the assessor's books and if found regular and in proper form, I see no reason why an assessor thus appointed could not complete the assessor's books by signing such certificate. It seems to me that it would be altogether too technical, under the facts and circumstances in your letter, to hold that all the property in the city of Linton should be reassessed.

NELS G. JOHNSON

Attorney General