

**OPINION  
58-189**

March 24, 1958 (OPINION)

TAXATION

RE: Abatement - County Commissioners - Authority

On March 15, 1957, it was requested of this office that an opinion be issued on the following question:

Does section 57-2020 of the North Dakota Revised Code of 1943 authorize a board of county commissioners to abate, adjust, or refund property taxes on grounds other than the grounds for abatement and refunds specified in sections 57-2303, 57-2304, 57-2307, or 57-2904 of the North Dakota Revised Code of 1943?

The opinion requested has not been issued as of this date because of a case pending in Williams County that would decide the question. Because this question has been a reoccurring question and because the case pending on the question has not be litigated as yet, we feel it is expedient at this time to issue an opinion on the matter.

It has been stated broadly that administrative agencies in whom the general authority to grant tax abatements is vested have only such authority as is expressly given them by statute. 51 Am. Jur. 687, Section 749. There is specific authority granted by section 57-2020 of the North Dakota Revised Code of 1943 to the county commissioners to refund taxes.

Section 57-2020 was not intended to authorize the boards of county commissioners to approve abatements of assessments and refunds of taxes. In reviewing the legislative history of the various statutes involved we find that section 57-2020 of the North Dakota Revised Code of 1943 has its source in Chapter 286 of the 1931 Session Laws, which provided in part that one paying taxes under written protest may "Thereafter apply to the board of county commissioners under the provisions of Section 2241c of the 1925 Supplement to the Compiled Laws of North Dakota for the year 1913 for an abatement, adjustment or refundment of the taxes thus paid." Section 2241c is now section 57-4509. The 1943 Code Reviser's Notes to both the sections is as follows: "Revised in form, no change in meaning."

Section 57-4509 of the North Dakota Revised Code of 1943 by the words "submitted to the board of county commissioners for adjustment in accordance with the existing law" indicates a legislative understanding that abatements of assessments and refunds of taxes could be authorized by the board of county commissioners only as specifically provided in other provisions of the law.

In other words, section 57-2020 of the North Dakota Revised Code of 1943 is a procedural statute in that it outlines the method for recovering taxes paid. It is not intended to grant any right to the board of county commissioners to authorize refunds of taxes. This is further evident from the fact that section 1 of Chapter 276 of the Session Laws of 1931, in which section 57-2304 has its source,

provides in part that the board of county commissioners is authorized and empowered, subject to the approval of the state tax commissioner, to abate or refund, in whole or in part, such invalid assessments or taxes in the manner hereinafter prescribed and in the following cases only . . . The Code Reviser's Note to this section includes the statement that it was "revised in form for clarity." See also Security National Bank v. Twinde, 52 S.D. 352, 217 N.W. 542. It is obvious from a study of this case that section 57-2304, as originally enacted, was copied almost verbatim from a similar South Dakota statute. See also Fiman v. Hughes County, 55 S.D. 204, 225 N.W. 711.

The above review of the legislative history of the statutes was taken substantially from a letter written to Mr. Telmar E. Rolfstad, Williston, North Dakota, by Kenneth M. Jakes, Special Assistant Attorney General for the State Tax Department.

After a study of the question and of the letters written by Mr. Kenneth M. Jakes and the memo written by Mr. F.J. Magill of the firm of Nilles, Oehlert and Nilles, Fargo, North Dakota, it is the opinion of this office that section 57-2020 of the North Dakota Revised Code of 1943 does not authorize a board of county commissioners to abate, adjust or refund property taxes except in those cases specifically authorized by statute.

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