

N.D.A.G. Letter to Wilkes (Feb. 28, 1992)

February 28, 1992

Mr. Richard C. Wilkes
Burke County State's Attorney
P.O. Box 190
Bowbells, ND 58721-0190

Dear Mr. Wilkes:

Thank you for your February 3, 1992, letter wherein you inquire whether a board of county commissioners has jurisdiction under N.D.C.C. ch. 57-23 to abate or refund the cost of cutting weeds charged by a board of township supervisors under N.D.C.C. § 63-05-03.

For the following reasons, it is my opinion that a board of county commissioners has jurisdiction under N.D.C.C. ch. 57-23 to abate or refund the cost of cutting weeds charged by a board of township supervisors under N.D.C.C. § 63-05-03.

A county is a creature of the constitution and may act only in the manner and on the matters prescribed by the Legislature in statutes enacted under constitutional authority. County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 329 (N.D. 1985).

N.D.C.C. § 63-05-01 provides:

63-05-01. Landowners or operators along county and township highways to cut weeds and grasses. It is the duty of landowners or operators with land adjoining regularly traveled county and township highways, as designated by the township board of supervisors in organized townships, the board of county commissioners in unorganized townships, and the board of county commissioners in the case of county highways, to cut all weeds and grasses along the regularly traveled highways adjoining their lands, including weeds and grasses growing within the public right of way bordering the highways and their lands. The cutting shall be completed not later than September fifteenth or October first, as prescribed by the board of county commissioners.

(Emphasis supplied.)

N.D.C.C. § 63-05-03 provides:

63-05-03. Failure to cut weeds and grasses -- Expenses levied as taxes against land. If the landowner or operator fails to cut the weeds and grasses along the designated highways or roads as provided in this chapter, the board of township supervisors or the board of county commissioners, as

the case may be, may cause the weeds and grasses to be cut and the actual expense of cutting shall be certified to the county auditor, and all of the expenses shall be charged against the land of the landowner and shall become a part of the taxes to be levied against the land for the ensuing year and shall be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto.

(Emphasis supplied.)

Therefore, a tax may be levied to cover the cost of cutting weeds and grasses along a township highway if a responsible landowner does not comply with the provisions of N.D.C.C. § 63-05-01. N.D.C.C. § 57-23-04(1)(h) provides:

57-23-04. County commissioners may abate or refund taxes.

1. Upon application filed in the office of the county auditor on or before November first of the year following the year in which the tax becomes delinquent, as in this chapter provided, the board of county commissioners may abate or refund, in whole or in part, any assessment or tax upon real property, in the following cases:

....

- h. When the assessment on the complainant's property is invalid, inequitable, or unjust.

(Emphasis supplied.)

Since the charges under N.D.C.C. § 63-05-03 are levied as a tax, a levy under N.D.C.C. § 63-05-03 may be abated by a board of county commissioners under N.D.C.C. § 57-23-04(1)(h) if the levy is invalid. A levy under N.D.C.C. § 63-05-03 is invalid if a landowner complied with the obligation imposed by N.D.C.C. § 63-05-01.

In your letter you raise a question regarding the provisions of N.D.C.C. § 57-45-14 governing when taxes may be held invalid. If the board of county commissioners finds as a matter of fact that the landowner complied with N.D.C.C. § 63-05-01, the levy can be held invalid under N.D.C.C. § 57-45-14(1).

Whether the duty imposed by N.D.C.C. § 63-05-01 has been met is a question of fact. When an abatement application is before a board of county commissioners, the board is the finder of fact. This office has no authority to substitute its findings of fact in any specific case for that of a board of county commissioners.

Therefore, to the extent that your letter refers to a specific abatement application that is before the Burke County Board of County Commissioners, only the Board can make findings of fact which determine whether a landowner met the duty imposed by N.D.C.C. § 63-05-01.

Sincerely,

Nicholas J. Spaeth

pg