

Date Issued: March 23, 1981 (AGO 81-28)

Requested by: Richard C. Wilkes, Assistant State's Attorney for Ward County

- QUESTIONS PRESENTED -

I.

Whether subsection 2 of section 11-10.1-05, of the North Dakota Century Code requires that on January 1, 1981, each assessor in a county, regardless of how long he has served as assessor, must have met the minimum requirements for assessor.

II.

Whether subsection 2 of section 11-10.1-05, N.D.C.C., requires that an assessor be certified by the state supervisor of assessments by January 1, 1982, if that individual assumed the assessor's duties in January 1981, for a city or township that had exercised the option to employ its own assessor.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that subsection 2 of section 11-10.1-05, N.D.C.C., was intended to require that by January 1, 1981, every assessor in the county who at that time had been an assessor for at least one year must meet the minimum requirements for the kind of assessment jurisdiction for which the assessing duties are to be performed. However, if an assessor did not have an opportunity to become certified because a course of instruction was not conducted or provided by the county director of tax equalization, then the assessor may continue until given the opportunity to take the course of instruction and become certified by the state supervisor of assessments.

II.

It is my further opinion that a city with a population under five thousand or a township must have exercised its option prior to January 1, 1981, to retain its assessor in order to employ an assessor after that date. If the assessor assumes his duties in January 1981, he cannot continue as assessor for more than one year unless the state supervisor of assessments has certified that he has met the established minimum requirements. However, if the assessor did not have an opportunity to become certified within that time because a required course of instruction was not conducted or provided during that year by the county director of tax equalization, he can continue as assessor until he has had that opportunity, provided he then becomes certified by the state supervisor of assessments.

- ANALYSIS -

I.

The only specific date prescribed in subsection 2 of section 11-10.1-05, N.D.C.C., is January 1, 1981. That is the date on which the county director of tax equalization succeeds to the duties of each assessor in the county, except that he does not do so in the following instances: first, he does not do so in any city with a population of five thousand or more, as provided in the 1979 amendment to subsection 2; and, second, he does not do so in any city with a population under five thousand or any township that prior to January 1, 1981, had exercised its option to retain the city or township assessor. Those provisions must, however, be construed and reconciled with two further provisions: first, that the state supervisor of assessments, after conferring with other designated persons, shall establish minimum requirements for city and township assessors, which requirements may include courses of instruction to be conducted by the county director of tax equalization; and, second, no city or township assessor shall serve longer than twelve-months unless certified by the state supervisor of assessments as having met the minimum requirements.

The 1977 amendment that enacted the above provisions as subsection 2 of section 11-10.1-05, N.D.C.C., was no doubt intended to upgrade the assessing skills of the assessor, particularly the assessor for any city or township that exercised the option to retain its own assessor. Because some period of time obviously was necessary for the state supervisor of assessments to establish the minimum requirements for the assessor and for the county director of tax equalization to conduct any course of instruction included in those requirements, January 1, 1981, was prescribed as the date on which the county director of tax equalization would succeed to the assessors' duties in cities and townships that did not exercise the option to retain assessors.

If, however, an assessor of a city or township that exercised the option to retain its assessor had no opportunity to take a prescribed course of instruction because the course was never conducted by the county director of tax equalization, it would not be reasonable to assume that the Legislature intended, without more explicit language, that the county director of tax equalization should succeed to the assessing duties of that city or township assessor on January 1, 1981. The assessor in such a case therefore should be permitted to continue in office after January 1, 1981, until given the opportunity to take any course of instruction required to meet the minimum requirements and become certified by the state supervisor of assessments.

II.

The analysis provided above for the first question presented is also applicable here. subsection 2 of section 11-10.1-05, N.D.C.C., provides that neither a city with less than five thousand population nor a township can employ an assessor after January 1, 1981, unless prior to that date it had exercised its option to employ its own assessor. If such a city or township that exercised the option before January 1, 1981, does not have an

assessor on that date, the assessor that it thereafter employs must either have been certified by the state supervisor of assessments as having met the minimum requirements or, if not certified, he must become certified within twelve months from the day he assumes the duties of the assessor's office, except that if he had no opportunity within that period to take any required course of instruction, he can continue in office beyond the twelve month period until he does have that opportunity, provided the state supervisor of assessments then certifies that he has met the minimum requirements.

In a city or township that has exercised its option before January 1, 1981, to retain its assessor a vacancy can, of course, occur in that office. If the city or township is not able to fill the office with a certified assessor, the person appointed or elected to fill it then has one year within which to become certified unless, as already explained, he had no opportunity during that year to take any required course of instruction.

- 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.

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