

Date Issued: June 18, 1981 (AGO 81-64)

Requested by: Kent Conrad, State Tax Commissioner and
Secretary of the Board of Equalization

- QUESTION PRESENTED -

Whether administrative proceedings under the Administrative Agencies Practice Act presently pending before the North Dakota State Board of Equalization are terminated on July 1, 1981, under the provisions of subsection 1 of section 28-32-01 of the North Dakota Century Code, as amended by the 1981 Legislative Assembly.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that all administrative proceedings pending before the Board of Equalization pursuant to the Administrative Agencies Practice Act will be terminated July 1, 1981.

- ANALYSIS -

There are several administrative proceedings which are presently before the Board of Equalization pursuant to the Administrative Agencies Practice Act. The 1981 Legislative Assembly enacted House Bill 1042, which will become effective on July 1, 1981. This legislation, which amends subsection 1 of section 28-32-01, N.D.C.C., redefines "administrative agency" for the purposes of the Administrative Agencies Practice Act. It then excepts numerous governmental bodies and boards from that definition, including the Board of Equalization. Thus, beginning July 1, 1981, the Board of Equalization will no longer be an "administrative agency" under the Administrative Agencies Practice Act.

It is a general rule of law that the repeal of a statute, without any reservation, takes away all remedies given by the repealed statute and defeats all actions and proceedings pending under it at the time of its repeal. This rule has been consistently followed unless a jurisdiction has chosen to deviate from it by constitutional provision or appropriate legislation. Bruner v. United States, 243 U.S. 112, 72 S. Ct. 581 (1952); General Agriculture Corp. v. Moore, 534 P.2d. 859 (Mont. 1975); 73 Am. Jur.2d. Statutes Section 389; 82 C.J.S. Statutes Section 439; and Sutherland, Statutory Construction, Fourth Ed., Vol. 1A, Section 23.40.

Therefore, effective July 1, 1981, the Board of Equalization will no longer have jurisdiction to hold hearings or take any action pursuant to the Administrative Agencies Practice Act.

- 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until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

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