

Office of the Attorney General
State of North Dakota

Opinion No. 81-99

Date Issued: September 9, 1981

Requested by: State Board of Equalization

--QUESTION PRESENTED--

Whether the State Board of Equalization has the authority, when considering the valuation and assessment of agricultural lands, to use a factor of fifteen percent of annual gross income produced for the 'annual gross return' for sugar beet and potato lands.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the State Board of Equalization does not have the authority, when considering the valuation and assessment of agricultural lands, to use a factor of fifteen percent of annual gross income produced for the 'annual gross return' for sugar beet and potato lands.

--ANALYSIS--

Chapter 57-13 of the North Dakota Century Code provides that the State Board of Equalization shall annually equalize the valuation and assessment of property throughout the state. Section 57-13-04(1), N.D.C.C., pertains to the equalization duties of the State Board of Equalization:

1. Equalize the assessment of real property by adding to the aggregate value thereof in any assessment district in a county and in every county in the state in which the board may believe the valuation too low, such rate percent as will raise the same to its proper value as provided by law, and by deducting from the aggregate assessed value thereof, in any assessment district in a county and in every county in the state in which the board may believe the value too high, such percent as will reduce the same to its proper value as provided by law. City lots shall be equalized in the manner provided for equalizing other real property; (Emphasis supplied)

The emphasis in Section 57-13-04(1), N.D.C.C., that equalization shall be to raise or lower property values to reach 'its proper value as provided by law' is eminently clear.

In Section 57-02-01, Subsections 11, 12, 13, 14 and 15, N.D.C.C., distinguish, by use, the classification of agricultural lands from four other classes of property, those being residential, centrally assessed, railroad, and commercial.

Section 57-02-27.1, N.D.C.C., provides that the valuation of agricultural lands shall be as determined pursuant to Section 57-02-27.2, N.D.C.C. Section 57-02-27.2, N.D.C.C., directs that agricultural lands shall be valued by creating a subclassification for crop lands and a subclassification for grazing lands and then applying a specific formula to each subclassification. That part pertinent to the subject of this opinion reads as follows:

. . . Agricultural value shall be defined as the 'capitalized average annual gross return'. The 'annual gross return' shall be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis. For purposes of this section, 'annual gross return' for cropland means thirty percent of annual gross income produced, . . . (Emphasis supplied)

In addition, Section 57-02-27.2, N.D.C.C., provides that the agricultural economics department of North Dakota State University, rather than the State Board of Equalization, shall make the computations that are required by that section for arriving at agricultural values for the purpose of assessment.

When words and phrases are defined by a statute, they shall be construed according to that definition. Sections 1-02-02 and 1-02-03, N.D.C.C. Furthermore, when a statute is free of ambiguity, the letter of it cannot be ignored under the pretext of pursuing its spirit. Section 1-02-05, N.D.C.C. *Morton County v. Henke*, 308 N.W.2d 372 (N.D. 1981).

Thus, if the State Board of Equalization used a factor of fifteen percent of annual gross income produced for the 'annual gross return' for sugar beet and potato lands it would not be complying with the clear directive given to it by the Legislature to use a factor of thirty percent. The State Board of Equalization has no discretion in this regard.

Prior to the amendments enacted by the 1981 Legislative Assembly, all property in North Dakota historically was required by Section 57-02-27, N.D.C.C., and its antecedents to be assessed at its 'true and full' value as defined by Section 57-02-01(4), N.D.C.C., and its antecedents. This section defined 'true and full' value to mean fair market value. Fair market value has been traditionally measured by the willing buyer/willing seller concept. *White v. Board of Review of Polk County*, 244 N.W.2d 765 (Ia. 1976).

Section 57-13-04(3), N.D.C.C., provides:

57-13-04. GENERAL DUTIES AND POWERS OF BOARD. The state board of equalization shall equalize the valuation and assessment of property throughout the state, and shall have power to equalize the assessment of property in this state between assessment districts of the same county, and between the different counties of the state. It shall:

3. In making such equalization, add to or deduct from the aggregate assessed valuation of lands, city lots, or any class of personal property throughout the state, such percent as may be deemed by the board to be equitable and just, but in all cases of addition to or deduction from the assessed valuation of any class of property in the several assessment districts in each county and in the several counties of the state, or throughout the state, the rate percent of addition or deduction shall be even and not fractional; and

Section 57-13-04(3), N.D.C.C., has, as its first antecedent, Section 4 of Chapter 100 of the 1891 Session Laws, and therefore has historically pertained to the fair market value method of valuation rather than a specified formula for a designated class of property as is set out in Section 57-02-27.2, N.D.C.C. Nevertheless, the State Board of Equalization only had the discretion when acting pursuant to the provisions of Section 57-13-04(3), N.D.C.C., to raise or lower property valuations so that they met 'true and full' value as prescribed and defined by statute.

As early as 1896, the North Dakota Supreme Court in *Shuttuck v. Smith*, 69 N.W. 5 (N.D. 1896), said the following with respect to the State Board of Equalization, the limited discretion of the State Board of Equalization, and the equalization process:

The statute not only gave the board of equalization the power, but it made it the absolute duty of the board, in case property was assessed below its actual value, to raise the assessment to the actual valuation. 69 N.W. 5, 13.

The North Dakota Supreme Court in *Montana-Dakota Utilities Co. v. Johanneson*, 153 N.W.2d 414 (N.D. 1967), citing numerous earlier decisions, said:

In passing on the validity of a legislative enactment, every reasonable presumption is in favor of the constitutionality of the law, and this presumption is conclusive in the absence of clear proof to the contrary. 153 N.W.2d 414, 420.

If Section 57-13-04(3), N.D.C.C., was interpreted to give the State Board of Equalization the authority to ignore the express formula set forth in Section 57-02-27.2, N.D.C.C., and instead use a factor of fifteen percent of annual gross income produced for the 'annual gross return' for sugar beet and potato lands, Section 57-13-04(3), N.D.C.C., would necessarily be void as an unconstitutional delegation of legislative authority.

Article X, Section 5 of the North Dakota Constitution provides, in part, that '[T]axes shall be uniform upon the same class of property. . . .' The North Dakota Supreme Court in *Souris River Telephone Mutual Aid Corp. v. State*, 162 N.W.2d 685 (N.D. 1968), held that the North Dakota Constitution granted the authority and discretion to the Legislature to classify, as well as subclassify, property for taxation purposes. Section 57-02-01, N.D.C.C., classified agricultural lands as well as four other classes of property. Section 57-02-27.2, N.D.C.C., subclassified agricultural lands into crop lands and grazing lands.

The North Dakota Supreme Court has held in several cases that the authority of the Legislature cannot be delegated. *Montana-Dakota Utilities Co. v. Johanneson*, supra; *Nord v. Guy*, 141 N.W.2d 395 (N.D. 1966); *State, ex rel. Kaufman v. Davis*, 229 N.W. 105 (N.D. 1930); and *Wilder v. Murphy*, 218 N.W. 156 (N.D. 1928).

If Section 57-13-04(3), N.D.C.C., allowed the State Board of Equalization to further subclassify agricultural lands into sugar beet and potato lands, it would be an unconstitutional delegation of legislative power.

If the State Board of Equalization, under the color of the authority granted to it by the provisions of Section 57-13-04(1), (3), N.D.C.C., used a factor of fifteen percent of annual gross income produced for the 'annual gross return' for sugar beet and potato lands, it would be creating a de factor classification of property.

In *Soo Line Railroad Co. v. State*, 286 N.W.2d 459 (N.D. 1979), the North Dakota Supreme Court addressed the then existing de facto classification of property in this state as follows:

We conclude that it is time that something be done to correct this problem of classification without authorization by statute which presently exists in North Dakota.

We will no longer countenance de facto classification of property in North Dakota for purposes of taxation. 286 N.W.2d 459, 465.

Therefore, classification of property without benefit of statute is not within the authority of the State Board of Equalization.

We have a well-ordered process in North Dakota of allowing changes in our laws to be made every two years by the Legislative Assembly. The great advantage of this system is that we give each law an opportunity to properly function for a period of up to two years before we tinker with it. The question addressed in this opinion has faced the state for an awful long time. That question is essentially, what is the fairest and most equitable form of property taxation system? That question ought to be answered by the Legislature after it has given this law an opportunity to work during this current biennium. Any action taken by the State Board of Equalization to reduce the factor for one class of property will necessarily mean that in each taxing district we will experience a ripple effect. In order to raise the same amount of money, as the tax on the property goes down, the tax on other property must go up.

--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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