

**LETTER OPINION
2002-L-09**

February 7, 2002

Ms. Barbara L. Whelan
Pembina County State's Attorney
301 Dakota St W Unit 9
Cavalier, ND 58220-4100

Dear Ms. Whelan:

Thank you for your inquiry regarding whether the State Board of Equalization may equalize for tax assessment purposes the true and full value of agricultural lands within plus or minus five percent of the formulary values calculated by the agricultural economics department of North Dakota State University.

Among the general duties and powers of the State Board of Equalization is the equalization of the valuation of property throughout the state, including between assessment districts within the same county as well as between counties. N.D.C.C. § 57-13-04. This includes increasing or lowering aggregate values as needed to reach the values required by law. N.D.C.C. § 57-13-04(1).

By definition, the classification of agricultural lands is distinguished from four other classes of property: centrally assessed, commercial, railroad and residential. See N.D.C.C. § 57-02-01(1), (4), (5), (11), (12). All classes of property are assessed on the basis of the value of the property. N.D.C.C. § 57-02-27.1. However, the determination of the value of agricultural property is significantly different than other types of property. Since 1981, the true and full value of agricultural lands is calculated by creating a subclassification for crop lands and a subclassification for grazing lands and then applying a specific formula to each subclassification. N.D.C.C. § 57-02-27.2.

The agricultural economics department of North Dakota State University (NDSU), rather than the State Board of Equalization, is responsible for making the computations that are required for determining the true and full formulary value for each county's agricultural lands. Id. Imbedded within the complicated formula NDSU must use to come up with this value are several estimates and averages. Id. The State Board of Equalization apparently has determined that because the formula is based on estimates

and averages, by necessity the result will be an approximate value. This determination seems reasonable.

The North Dakota Supreme Court recognized that when the members of the State Board of Equalization are centrally assessing property, the members can use a wide range of knowledge in making these factual determinations and those determinations will not be disturbed by a court unless they are arbitrary, capricious or unreasonable. Koch Hydrocarbon v. Bd. Of Equalization, 454 N.W.2d 508, 513 (N.D. 1990). Thus, the State Board of Equalization's reasonable interpretations of these very complex property assessment statutes is entitled to some deference.

The State Board of Equalization is required to equalize the assessment of real property only when the board believes the value established by the local assessing officials is too low or too high. N.D.C.C. §57-13-04(1). The statutory authority for the Board to subjectively determine what it believes to be too low or too high dovetails with the deference accorded the Board when interpreting the complex statutes it is to enforce. The Board has determined that a plus or minus tolerance of five percent around the value computed by NDSU will result in a valuation that is neither too low nor too high. This determination not only appears reasonable, but given the deference to be accorded the Board's decision and the fact that the Board's decision does not appear arbitrary, capricious or unreasonable, the Board's determination appears lawful.

Therefore, it is my opinion that the members of the State Board of Equalization have discretion when equalizing for tax assessment purposes the true and full value of agricultural lands to establish a tolerance of plus or minus five percent of the formulary values calculated by the agricultural economics department of North Dakota State University.

Sincerely,

Wayne Stenehjem
Attorney General

rww/sam/vkk