

LETTER OPINION
99-L-87

September 24, 1999

Honorable Joel C. Heitkamp
State Senator
16543 94 1/2 Street SE
Hankinson, ND 58041-9538

Honorable Vern Thompson
State Senator
PO Box 25
Minnewaukan, ND 58351-0025

Dear Senators Heitkamp and Thompson:

Thank you for your letters requesting my opinion on whether the assessor has any discretion in placing a value on the land that the county commission has determined meets the statutory definition for inundated agricultural land for property assessment purposes.

N.D.C.C. § 57-02-27.2 governs the valuation and assessment of agricultural lands. The definition of agricultural value for inundated agricultural land is different than the definition of agricultural value for non-inundated agricultural land. N.D.C.C. § 57-02-27.2(1) and (6). See also 1999 N.D. Op. Att'y Gen. L-75 (Sept. 2 letter to Debra Lundgren) and 1999 N.D. Op. Att'y Gen. 36. The last sentence of subsection 6 states:

. . . Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.

N.D.C.C. § 57-02-27.2(6). Therefore, it is my opinion that the assessor has the flexibility to consider the probability that the land "will be suitable for agricultural production as cropland or for grazing farm animals in the future" when placing a value on individual parcels of inundated agricultural land. Several factors may be considered in determining the probability that the property will be suitable for production in the future. Among these are the length of time the land has been under water; the depth of water covering the land at the current time; the depth of water covering the land since it has been inundated; the condition of the land, its use and productivity prior to its inundation; and the soil type and

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classification for the land prior to its inundation. While this is not an exhaustive list, it should give some guidance to assessors in placing a value on individual parcels of inundated agricultural land.

Some of these factors go to the likelihood of the land being dry enough to be productive in future years, while others go more to the extent of productivity which may be anticipated. In my opinion, it is appropriate under the language of the statute to consider both types of factors in valuing land which is inundated.

Factors indicating the probability that the land will be suitable for agricultural production in future years would support an increased valuation. In the absence of such factors, it is my opinion that subsection 6 of N.D.C.C. § 57-02-27.2 requires the valuation for inundated agricultural land to be ten percent of the average agricultural value of noncropland for the county as determined under N.D.C.C. § 57-02-27.2.

Sincerely,

Heidi Heitkamp
Attorney General

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