

**LETTER OPINION**  
**99-L-75**

September 2, 1999

Honorable Debra S. Lundgren  
State Representative  
7082 Highway 13  
Kulm, ND 58456-9705

Dear Representative Lundgren:

Thank you for your letter requesting my opinion on whether county commissioners have the authority to select which land classifications they will recognize for tax assessment purposes. You state that two of the counties in your district have decided not to recognize the inundated land classification.

The authority to classify property for tax assessment purposes rests with the Legislature. Signal Oil & Gas Co. v. Williams County, 206 N.W.2d 75 (N.D. 1973).

Section 176 [currently article X, section 5] of the North Dakota Constitution has been construed by this court as granting to the Legislature discretion to classify various subjects, including property and persons, for tax purposes. Souris River Telephone Mutual Aid Corp. v. State, 162 N.W.2d 685 (N.D. 1968). This legislative authority and discretion is subject only to the limitation that such classification must not be arbitrary.

Id. at 81. In 1979 the North Dakota Supreme Court held that "all assessments of property in North Dakota for purposes of taxation must be uniform beginning with the 1981 property tax assessments, unless the Legislature provides for classification of property for purposes of assessment." Soo Line R.R. Co. v. State, 286 N.W.2d 459, 468 (N.D. 1979) (on petition for rehearing).

The "'true and full value' of agricultural lands must be determined pursuant to section 57-02-27.2." N.D.C.C. § 57-02-27.1. N.D.C.C. § 57-02-27.2 states that the "true and full value" of agricultural lands must be their agricultural value. The 1999 Legislative Assembly enacted a new subsection to N.D.C.C. § 57-02-27.2 creating a new sub-classification of agricultural property labeled "inundated agricultural land." 1999 N.D. Sess. Laws ch. 495, § 1. The "agricultural value" for inundated agricultural land is figured differently than the "agricultural value" for other agricultural lands. N.D.C.C. § 57-02-27.2(1), (6). The statute does not give

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counties the discretion to value inundated agricultural lands in any manner other than that set forth in subsection 6 of N.D.C.C. § 57-02-27.2.

The board of county commissioners, however, does play a role in determining which land meets the statutory definition of "inundated agricultural land." Subsection 6 of N.D.C.C. § 57-02-27.1 states: "Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year." It is my opinion that this language does not give the county commissioners the option of ignoring the classification of inundated agricultural land, but only authorizes them to determine which land qualifies under the statutory definition of the classification. "For purposes of this section, 'inundated agricultural land' means property classified as agricultural property which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for a full growing season or more." N.D.C.C. § 57-02-27.2(6). See also 1999 N.D. Op. Att'y Gen. 36 (concerning land qualifying for classification as inundated agricultural land).

You also ask what recourse is available to landowners that applied for inundated status and were denied based on the county's refusal to recognize such a classification. Pursuant to N.D.C.C. ch. 57-14, ten or more landowners in the county may petition the board of county commissioners to have any class of property in the county reassessed. N.D.C.C. § 57-14-08. If the board of county commissioners determines that the taxable property has been assessed unfairly or not in accordance with the law, in its discretion, it may order a reassessment of any class of property or of all property within the county prior to October first.

Another avenue open to landowners that believe their land was improperly assessed is to file an application for an abatement of the assessment or a refund of the taxes. N.D.C.C. § 57-23-01 provides: "All assessments of any taxable property in excess of the full and true value in money are subject to correction and abatement and refund under the provisions of this chapter." N.D.C.C. § 57-23-05 establishes the procedure for filing an application for an abatement or refund with the county auditor. N.D.C.C. § 57-23-04 specifies that such an application must be filed "on or before November first of the year following the year in which the tax becomes delinquent." This section further authorizes the board of county commissioners to abate or refund, in whole or in part, any tax or assessment on real property when an error has been made in entering the valuation of the property or when the assessment on the complainant's property is

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invalid, inequitable, or unjust. N.D.C.C. § 57-23-04(1)(a), (h). A landowner may file an application for refund of taxes paid regardless of whether the taxes were paid under protest. N.D.C.C. § 57-23-04(2). A hearing will be held on any application for abatement pursuant to N.D.C.C. § 57-23-06. Any decision of the board of county commissioners on an application for abatement or refund may be appealed to district court. N.D.C.C. § 57-23-04(3).

Although N.D.C.C. § 57-23-04 is worded in terms of the board of county commissioners being authorized to abate or refund assessment or taxes, N.D.C.C. § 57-23-05 is written in terms of the landowner's entitlement to an abatement or refund if the conditions are met.

Any person having any estate, right, title, or interest in or lien upon any real property who claims that the assessment made or the tax levied against the same is excessive or illegal, in whole or in part, is entitled to make an application for an abatement, refund, or compromise, as the case may be, and have the application granted if the facts upon which the application is based bring it within the provisions of this chapter for abatement, refund, or compromise.

N.D.C.C. § 57-23-05 (emphasis added). Therefore, it is my opinion that any landowner that has been denied an "inundated agricultural land" classification for agricultural land that meets the statutory definition of that term is entitled to file an application for an abatement or refund with the county auditor pursuant to N.D.C.C. ch. 57-23.

Sincerely,

Heidi Heitkamp  
Attorney General

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