

LETTER OPINION
96-L-185

October 28, 1996

Honorable Earl Rennerfeldt
State Representative
1704 Rose Lane
Williston, ND 58801

Dear Representative Rennerfeldt:

Thank you for your letter asking whether a board of county commissioners can assign statutory duties of the county auditor to another person, such as the county director of tax equalization. You also ask whether the lands over which the state of North Dakota has a highway easement (or right-of-way) should be listed in the assessment roll.

State law provides that each county must have a county auditor "unless it has adopted one of the optional forms of county government provided by the code or has combined or separated the functions of county offices or redesignated offices as elective or appointive pursuant to chapter 11-10.2 or 11-10.3." N.D.C.C. § 11-10-02. The duties of the county auditor are specified throughout the North Dakota Century Code, particularly in title 11 (regarding counties), title 16.1 (regarding elections), and title 57 (regarding taxation).

N.D.C.C. ch. 11-09 provides for two forms of the county managership form of government: the county manager form and the short form of county managership. N.D.C.C. § 11-09-01. Under both forms of county managership, the county manager is responsible for all duties generally specified for the county auditor in the matter of assessment of property for taxation and the preparation of the tax rolls. N.D.C.C. § 11-09-14(1). In counties adopting the short form of county managership, the remaining duties generally specified for the county auditor are performed by or under the direction of the county manager. N.D.C.C. § 11-09-17. In counties adopting the county manager form, the remaining duties generally specified for the county auditor are performed by the director of finance. N.D.C.C. § 11-09-17.

If a county has adopted a home rule charter pursuant to N.D.C.C. ch. 11-09.1, the county may have the authority in its charter to assign certain duties of the county auditor to another officer. See N.D.C.C. § 11-09.1-05(3); Letter from Attorney General Heidi Heitkamp to Earle Myers (April 4, 1996).

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If a county has not adopted either of the two forms of the county managership form of government, or a home rule charter containing the necessary authority, the only authority under which the board of county commissioners may assign duties of the county auditor to another person is found in N.D.C.C. ch. 11-10.2. Chapter 11-10.2 requires the county to do an analysis of each affected office in determining whether office duties should be reassigned. See N.D.C.C. § 11-10.2-03. A proposed plan must be based on the analysis and "[o]ne copy of the plan as approved must be filed with the district court for the county and one with the county auditor or functional equivalent to remain as a part of the county's permanent records." N.D.C.C. § 11-10.2-04.

In conclusion, it is my opinion that unless a county has adopted either of the two forms of the county managership form of government, or has adopted a home rule charter containing the necessary authority, or has utilized the procedures in N.D.C.C. ch. 11-10.2, the board of county commissioners has no authority to assign any of the duties of the county auditor to another person, including the county director of tax equalization. Thus, for example, when a statute requires the making of returns to, or the filing of documents with, the county auditor, the board of county commissioners may not authorize the returns to be made or the documents to be filed with someone else. See e.g., N.D.C.C. §§ 57-02-08(20)(c), 57-02-14.1, 57-09-06, 57-23-04(1), 57-23-05. Similarly, when a statute requires the county auditor to present abatement or refund applications to the board of county commissioners, the board of county commissioners may not authorize someone else to present to them such applications. See e.g., N.D.C.C. § 57-23-05.

Three sections of state law address the relationship between the county director of tax equalization and the county auditor. N.D.C.C. § 11-10.1-06 provides, in part:

The county director of tax equalization shall succeed to all the powers and duties of the county auditor pertaining to the administration and enforcement of the mobile homes tax prescribed in chapter 57-55, [and] assist the county auditor in preparation of assessment lists for taxing purposes and in the correction and omission procedures as defined in chapter 57-14 [regarding correction of assessments of property]. . . .

N.D.C.C. § 57-02-08.4 provides:

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The county director of tax equalization shall certify to the county auditor, for each landowner receiving the [wetlands] exemption, the landowner's name, the amount of tax which would have been due on the exempt acreage for the most recent past tax year, and that the landowner has filed the required agreement.

Finally, N.D.C.C. § 57-55-04.1 provides: "The county auditor shall promptly serve the county director of tax equalization with one copy of the application [for abatement, refund, or compromise of the mobile home tax]. . . ."

You also ask whether lands over which the state of North Dakota has a highway easement (or right-of-way) should be listed in the assessment roll. State law provides:

The board of county commissioners is authorized and directed to remove from the tax rolls and to declare as exempt from taxation . . . all lands upon which the owner thereof has granted or hereafter shall grant an easement for a highway or road right of way to . . . the state . . . and such lands so removed from the tax rolls shall remain exempt until such time as such . . . highway shall have been abandoned. Such lands shall not be removed from the tax rolls and declared exempt from taxation until such time as the construction of such . . . highway thereon shall have been completed.

N.D.C.C. § 57-02-10. Thus, it is my opinion that lands over which the state of North Dakota has a highway easement (or right-of-way) must be removed from the assessment roll after the construction of the highway is completed.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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