

Office of the Attorney General
State of North Dakota

Opinion No. 84-26

Date Issued: May 29, 1984

Requested by: Charles J. Gilje, Stutsman County State's Attorney

--QUESTION PRESENTED--

Whether a board of county commissioners can grant applications for abatement and refund of ad valorem property taxes to property owners within a school district where the school district is in the process of dissolution and where the prior year certified tax levy will create a surplus of revenue that will be enjoyed by the absorbing school districts.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a board of county commissioners cannot grant applications for abatement and refund of ad valorem property taxes to property owners within a school district where the school district is in the process of dissolution and where the prior year certified tax levy will create a surplus of revenue that will be enjoyed by the absorbing school districts.

--ANALYSIS--

The scope of the powers enjoyed by political subdivisions was previously addressed in N.D. Atty. Gen. Op. 81-138:

The North Dakota Supreme Court, in numerous cases, has held that the governing board of a public school district, city, county, or other political subdivision has no authority that is not either expressly or impliedly conferred by statute or essential to effectuate the purposes of the political subdivision. In defining such authority, the rule of strict construction applies and any doubt as to their existence or extent must be resolved against it. See, for example, *Lang v. Cavalier*, 228 N.W. 819, 822 (N.D. 1930); *Batty v. Board of Education*, 269 N.W. 49, 50 (N.D. 1936); and *Dornacker v. Olson*, 248 N.W.2d 844, 849-850 (N.D. 1976). Also see Attorney General's Opinion No. 81-128 issued on November 30, 1981. [N.D. Atty. Gen. Op. 81-138 at 1.]

Section 57-23-04 of the North Dakota Century Code sets forth the conditions which must exist before a board of county commissioners may grant abatements and refunds of ad valorem taxes.

Of the eight subsections to Section 57-23-04, N.D.C.C., only the first subsection contains language which may be applicable to the question presented. Section 57-23-04(1), N.D.C.C., provides:

57-23-04. COUNTY COMMISSIONERS MAY ABATE OR REFUND TAXES. Upon application filed in the office of the county auditor on or before November first of the year following the year in which the tax becomes delinquent, as in this chapter provided, the board of county commissioners may abate or refund, in whole or in part, any assessment or tax upon real property in the following cases:

1. When an error has been made in any identifying entry or description of the property, in entering the valuation thereof, or in the extension of the tax, to the injury of the complainant.

Without an allegation of error in either the identification or the valuation of the property in the school district the only language remaining for consideration is whether the question presented comes within the meaning of '. . . an error . . . in the extension of the tax. . . .'

It is my opinion that the phrase '. . . an error . . . in the extension of the tax' concerns the calculation of the applicable tax rate by the county auditor and has no relevancy to the question presented without an allegation that the county auditor erred in the calculation of the tax rate.

Consequently, there is no statutory authority which would authorize a board of county commissioners to abate or refund taxes with respect to the question presented. Furthermore, the granting of an abatement or refund of taxes under the question presented may constitute a gift that is prohibited by Article X, Section 18 of the North Dakota Constitution.

Therefore, it is my opinion that a board of county commissioners cannot grant applications for abatement and refund of ad valorem property taxes to property owners within a school district where the school district is in the process of dissolution. The 1983 certified tax levy will create a surplus of revenue that will be enjoyed by the absorbing school districts.

--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.

Robert O. Wefald
Attorney General

Prepared by: Robert W. Wirtz, Assistant Attorney General