

OFFICIAL OPINION NO. 78-14, Authority of county auditor to alter assessments and mill levy to offset error in assessment

April 25, 1978

Mr. Gene Paul Kean
Minnehaha County State's Attorney
Minnehaha County Courthouse
Sioux Falls, South Dakota 57102

Official Opinion No. 78-14

Authority of county auditor to alter assessments and mill levy to offset error in assessment

Dear Mr. Kean:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

In 1970, the United States government bought a parcel of land near the City of Sioux Falls. The government entered into a lease agreement with the corporation known as the Sioux Falls Development Foundation. By the terms of the long-term lease the Development Foundation constructed a building upon the land in return for payment. This property is carried on the tax rolls of Minnehaha County as personal property, but taxed as real property.

Pursuant to the change in the method of assessing real and personal property in the counties, in 1977, the Minnehaha County Board of Commissioners set the assessment rate at 60 percent of full and true value on personal property and 37 1/2 percent of full and true value on real estate.

Minnehaha County has a separate Office of Assessment and Equalization. The equalization office prepared the valuations for all real and personal property in Minnehaha County (outside of city corporate limits), and sent these values to the County Auditor. Based upon the budget requests of various departments, the mill levy was determined. This figure for the mill levy was given to the Treasurer who extended the

same upon the real and personal property in the County. The property owned by the Development Foundation was considered by the Assessor's office to be personal property in the County. He later determined this to be an error, stating then that it should have been considered as real estate. This error in information went to the Auditor's office. The Development Foundation has made a request for an abatement with the County Commissioners which has been granted. This reduced the taxes of the Development Foundation on this building by \$61,000.

The error of the Assessor was not discovered until approximately February 10, 1978. By this time many people in the school district involved with the property owned by the Development Foundation have paid their taxes. The school district has contacted the County and has requested that the County Treasurer and Auditor refigure the levy and valuation and bill for additional taxes. The County Treasurer and County Auditor are reluctant to do so, inasmuch as they can find no statutory authority to do so at this time. The Assessor admits that it was his error in failing to notify the Auditor's office that the building owned by the Development Foundation should be considered as real estate and not as personal property. It was because of this error that the Garretson School District in which the Development building is located finds itself \$61,000 short of its budget amount for the operating year 1978.

Based upon the above facts you ask the following questions:

QUESTIONS:

1. Does the County Auditor have any authority to change the assessments at this point in time?
2. Does the County Auditor have any authority to alter the mill levy at this point in time?
3. Should the property owned by the Development Foundation be taxed as real estate (which would allow it to be taxed at only 37 1/2 percent) or should it be taxed as personal property (which would allow it to be taxed at 60 percent of full and true value)?
4. Can Minnehaha County loan money to the Garretson School District in an amount equal to the lost tax revenue to compensate for this lost revenue?

IN RE QUESTION NO. 3:

First of all, in response to your third question, I would refer you to SDCL 10-4-6 which provides:

SDCL 10-4-6. Personal property shall, for the purpose of taxation, be construed to include all goods, chattels, money, credits, and effects, whatsoever they may be; all ships, boats, and vessels belonging to the inhabitants of this state, whether at home or abroad, and all capital invested therein; all money at interest, whether within or without this state, due the person to be taxed, and all other debts due such person; all public stocks and securities; the capital stock of all insurance companies organized under the laws of this state; all stock in turnpikes, railroads, canals, and other corporations, except national banks out of the state, owned by the inhabitants of this state; all personal property of moneyed corporations, whether the owners thereof reside in or out of the state, and the income of any annuity, unless the capital of such annuity be taxed within the state, all under the laws of the United States or of this state; *and all improvements made by persons upon lands held by them under the laws of the United States, except trees planted under the Timber Culture Act, and all such improvements upon lands, the title of which is still vested in any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property.* (Emphasis added.)

In my opinion, the above emphasized statutory language in SDCL 10-4-6 provides that the property of the Development Foundation should be taxed as personal property rather than real property. After the effective date of House Bill 1039, passed by the 1978 Legislative Session, the buildings on leased sites such as that in this fact situation would be taxed as real property. Chapter 72, Section 4 of the Session Laws of 1978.

IN RE QUESTIONS NO. 1 AND 2:

In regard to your first two questions, it appears to me that based upon cases such as *Palmer v. Beadle County*, 70 S.D. 97, 15 N.W.2d 6 (1945), and *Ledoux v. LaBee*, 83 F. 761 (1897), the auditor does not have authority to change assessments or mill levies at this point in time.

From the facts presented is not clear in this instance whether the Development Foundation has paid all of its taxes due. If the Development Foundation has not paid all of its taxes, and the county commissioners were to rescind their abatement action, there does appear to be some authority for the proposition that an adjustment on the Development Foundation's second half taxes could be made in view of the rescission of the abatement. 1939-40 AGR 718.

IN RE QUESTION NO. 4:

In response to your fourth question, I do not believe there is statutory authority for Minnehaha County to loan money to the Garretson School District to make up the amount of difference of tax dollars in this situation. SDCL 6-5-1 and 13-24-4 deal with the authority to transfer land or property belonging to local units of government between themselves upon such terms and conditions as may be determined and agreed upon by the respective governing bodies. It is my view, however, that these statutes contemplate transfers of tangible property and do not give authority to a county to act as a financial lending institution for other units of government.

As far as possible options for the school district are concerned, I would first of all refer you to the discussion of Question No. 2. If the Development Foundation has not paid all its taxes, the cancellation of the abatement could affect an adjustment of their second-half taxes.

I would also refer you to the possibilities available under § 13-19-7, *et seq.*, dealing with bonding authority of the school district.

Finally, I would refer you to § 9-21-28 as an additional possible alternative. Once again factual considerations will be determinative as to the availability of this remedy.

In view of § 13-16-22, the registered warrant procedure of § 13-18-19, *et seq.*, does not seem to be available here. Also, the "borrowing" authorizations contained in § 13-19-2, *et seq.*, would not seem to be appropriate in view of limitation in § 13-19-2 that such borrowing be limited to uncollected taxes levied by the school board for the current school year.

Respectfully submitted,

William J. Janklow
Attorney General

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