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#95023

STATE OF NEBRASKA
OFFICIAL
MAR 23 1995
DEPT. OF JUSTICE

DATE: March 17, 1995

SUBJECT: Authority of State Board of Equalization and Assessment Under Neb. Rev. Stat. § 77-506 (Cum. Supp. 1994) to Make Percentage Adjustments to Valuations of Classes or Subclasses of Property in a County.

REQUESTED BY: The Honorable Kate Witek
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding whether the State Board of Equalization and Assessment [hereinafter the "State Board" or "Board"], pursuant to its authority under Neb. Rev. Stat. § 77-506 (Cum. Supp. 1994) to adjust the valuations of classes or subclasses of real property in a county or tax district by a percent, may "issue an order reducing the valuation of real property in any county of the state at this time." (emphasis added). We assume that you are asking if the Board has authority to act under the statute to make such an adjustment retroactively to affect property valuations for prior tax years which have already been established by county assessors, reviewed by county boards of equalization, reviewed by the State Board, certified by the Board to the counties, and levied upon by the counties. While you do not indicate that you are contemplating legislation to address this issue if current law does not allow the Board to do so, we assume, for purposes of responding to your request, that this is the purpose of your request.

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Recently, in Op. Att'y. Gen. No. 95021 (March 15, 1995), we concluded that the Board lacked legal authority or jurisdiction to rescind or modify its prior equalization order entered in August, 1994, increasing by ten percent certain residential property values in Douglas County. We also determined that the Board did not have any authority to adopt a motion or to take other action affecting the valuations established as a result of its order. This conclusion, we noted, was compelled by the Nebraska Supreme Court's recent decision in ***Adams County v. State Bd. of Equal.***, 247 Neb. 179, 183, 525 N.W.2d 629, 631 (1995), in which the Court held that the Board "did not have jurisdiction to revisit its prior orders after the time for appeal passed." We further stated that our conclusion was also compelled by Nebraska constitutional and statutory provisions outlining the power and jurisdiction of the Board. For the reasons outlined below, we must also conclude that the Board's authority to increase or decrease the value of a class or subclass of real property in a county under § 77-506 is limited to Board action taken to perform its annual intercounty equalization function prior to August 15 each year, and therefore does not provide the Board with the power to make the kind of retroactive adjustment contemplated by your request.

The Nebraska Constitution provides that "[t]he necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct." Neb. Const. art. VIII, § 1. This provision further requires that "[t]axes shall be levied by valuation uniformly and proportionately upon all real property. . . ."[1] The Constitution further provides that the State Board "shall have power to review and equalize assessments of property for taxation within the state." Neb. Const. art. IV, § 28.

Except for agricultural and horticultural land, "all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value." Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 1994). The Legislature, pursuant to art. VIII, § 1, has provided the method of determining the taxable value of real property for tax purposes. Neb. Rev. Stat. § 77-112(1) (Cum. Supp. 1994) provides that "[a]ctual of real

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[1] Article VIII, § 1, also recognizes that "the Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property. . .but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land."

property for purposes of taxation shall mean the market value of real property in the ordinary course of trade."[2]

The State Board "shall annually equalize the values of all real property as submitted by the county assessors on the abstracts of assessments. . . ." Neb. Rev. Stat. § 77-505 (Cum. Supp. 1994). "Pursuant to section 77-505, the State Board of Equalization and Assessment shall have the power to increase or decrease the value of a class or subclass of real property of any county or tax district. . . . Such increase or decrease shall be made by a percent." Neb. Rev. Stat. § 77-506 (Cum. Supp. 1994). "Pursuant to section 77-506, if the State Board of Equalization and Assessment finds that a just, equitable, and legal assessment of the property in the state cannot be made without increasing or decreasing by a percentage the value of a class or subclass of property as returned by any county, the board shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing [which it may direct be conducted by the Tax Commissioner] at least five days following mailing of the notice." Neb. Rev. Stat. § 77-508 (Cum. Supp. 1994). "The State Board of Equalization and Assessment shall, pursuant to section 77-508, raise or lower the valuation of any class or subclass of property in a county when it is necessary to achieve intercounty equalization." Neb. Rev. Stat. § 77-508.01 (1990). "After a hearing conducted pursuant to section . . . 77-508, the State Board of Equalization and Assessment shall either (1) enter its order based on information presented to it at the hearing, or (2) meet to hear the recommendation of the Tax Commissioner based on information presented to him or her at the hearing." Neb. Rev. Stat. § 77-509 (Cum. Supp. 1994). An order of the Board entered pursuant to this section must be sent to county officials by August 15, and "shall specify the percentage increase or decrease and the class or subclass of property affected or the corrections or adjustments to be made to the class or subclass of property affected." *Id.*

The authority of the State Board to adjust valuations pursuant to its equalization power must be exercised on or before August 15 of each year, the last date on which the Board may certify values to the county assessors. "Each county shall be bound by the value established by the board", until the Court of Appeals (or the Supreme Court), "pursuant to an appeal prosecuted pursuant to section 77-510," "rules otherwise". Neb. Rev. Stat. § 77-509 (Cum. Supp. 1994). Within ten days of the Board's entry of any final action or decision with respect to the equalization or valuation of

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[2] The Legislature has, of course, provided a different method for determining the taxable value of agricultural and horticultural land. Neb. Rev. Stat. § 77-112(2) (Cum. Supp. 1994).

any property, "any person, county, or municipality affected thereby" must prosecute an appeal to the Court of Appeals. Neb. Rev. Stat. § 77-510 (Cum. Supp. 1994). The appeal provided by § 77-510 is the "exclusive method for appealing an action of the State Board. . . ."

As we understand the nature of your request, you are asking if the Board may act under its power to "increase or decrease the value of real property of any county" under § 77-506 at this time to reduce property valuations which were subject to Board review for a prior year or years. For the reasons noted at length in our prior Opinion No. 95021, recognition of such a power is inconsistent with both the Nebraska Supreme Court's decision in ***Adams County***, and the statutes governing the Board's exercise of its equalization powers. Section 77-506.01 provides that this power to increase or decrease the valuations of property by class or subclass is to be exercised "[p]ursuant to section 77-505". Section 77-505 authorizes the Board to "annually equalize" values of real property in the state. The Board's annual equalization authority expires when it acts by August 15 of each tax year, or, at most, when the ten day appeal time provided under § 77-510 expires. That time has long since passed. The Court in ***Adams County*** made it clear that the Board has no "[c]ontinuing jurisdiction" to revisit its prior decisions. 247 Neb. at 183, 525 N.W.2d at 631. The Board therefore has no authority under present Nebraska law to alter prior equalization decisions.

Very truly yours,

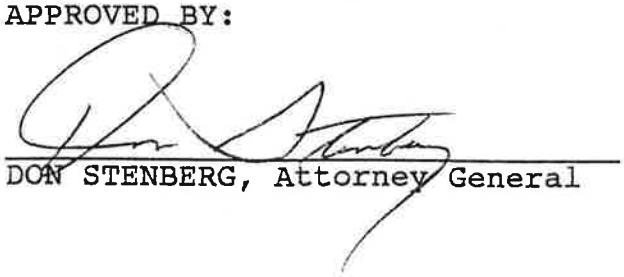
DON STENBERG
Attorney General

L. Jay Bartel
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

7-1000-7.33

APPROVED BY:



DON STENBERG, Attorney General