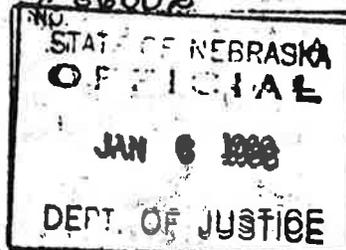


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: January 3, 1986

SUBJECT: The necessity of a county assessor certificate for individuals filing for the office of County Clerk, where the county clerk is also ex-officio County Assessor

REQUESTED BY: Robert G. Simmons, Jr.
Banner County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
John Boehm, Assistant Attorney General

This is in response to your letter of December 24, 1985. In that letter you express concern about a possible conflict between Neb.Rev.Stat. §77-423 (Supp. 1984) and Neb.Rev.Stat. §77-1337 (Reissue 1981). Your specific question is whether a person may file for the office of County Clerk, where the County Clerk also holds the position of ex officio county assessor, without first holding a county assessor certificate.

Neb.Rev.Stat. §77-423 provides as follows:

No person shall be eligible to file for or be appointed to the office of county assessor or serve as deputy assessor in any county of this state unless he or she shall hold a county assessor certificate.

Neb.Rev.Stat. §77-1337(1) provides that:

No person shall be eligible to assume the office of county assessor or county clerk acting as ex officio county assessor who does not hold an assessor's certificate issued by the Tax Commissioner pursuant to section 77-1326; Provided, that in those counties having a county clerk acting as ex officio county assessor, the county board may appoint a person holding an assessor's certificate issued by the Tax Commissioner pursuant to section 77-1326 to assist the county clerk acting as ex officio county assessor in his property tax duties when the county clerk acting as ex officio county assessor does not hold an assessor's certificate issued by the Tax Commissioner pursuant to section 77-1326.

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In a prior opinion dated November 4, 1970, this office reviewed a similar question regarding these two statutes. At that time Neb.Rev.Stat. §77-423 provided only that:

No person shall on or after January 1, 1970, assume the office of assessor or deputy assessor in any county of this state unless he shall hold a county assessor certificate.

Nevertheless, reading this statute in conjunction with the provisions of §77-1337(1) we concluded that the person elected to the office of County Clerk in a county where the County Clerk is ex officio county assessor could assume that office even though he does not hold a county assessor certificate issued by the Tax Commissioner. A copy of that opinion is enclosed.

Although Neb.Rev.Stat. §77-423 has since been amended as indicated above, we conclude that the reasoning contained in our prior opinion is still applicable here. In addition, we would note that Neb.Rev.Stat. §77-423, even as amended, provides only that the persons filing for the "office of county assessor" must have such a certificate as a prerequisite to filing. The individuals in question are, of course, not filing for the office of County Assessor, but rather for the office of County Clerk. In fact the office of County Assessor does not exist in such counties even though the County Clerk will assume the duties of the county assessor as ex officio county assessor, since the office of County Assessor has been abolished pursuant to Neb.Rev.Stat. §32-310 (Reissue 1984).

Furthermore, we conclude that Neb.Rev.Stat. §77-1337(1) does not apply only to the particular officeholders who were in office at the time this statutory provision was enacted in 1969. This certainly was not the interpretation of this statute in our previous opinion of November 4, 1970. While Neb.Rev.Stat. §77-1337(3) (Reissue 1981) does provide that "Notwithstanding any provision of this section, any county assessor holding office on April 11, 1969 by virtue of election by the people shall be entitled to complete the term for which he was elected.", there is no such language contained in Neb.Rev.Stat. §77-1337(1) which would limit its provisions to the specific officeholders at the time this law was enacted.

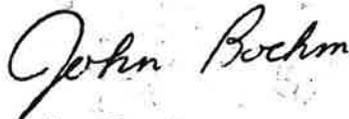
Consequently in view of the above, we must conclude that a person filing for the office of County Clerk in a county where the County Clerk also assumes the duties of county assessor as ex officio county assessor, may do so without possessing a county assessor certificate, and in effect is not bound by the restrictions of Neb.Rev.Stat. §77-423 (Supp. 1984). We would note, of course, that while such a person could file for the

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office of County Clerk, be elected to that office, and could assume the duties of ex officio county assessor, he nevertheless could not perform any of the county assessor's duties until the County Board appoints a person holding an assessor certificate to assist him in his property tax duties pursuant to Neb.Rev.Stat. §77-1337(1).

Sincerely,

ROBERT M. SPIRE
Attorney General

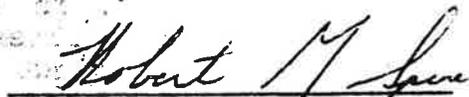


John Boehm
Assistant Attorney General

JB/bae

Enclosure

APPROVED:


Attorney General

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