

**OPINION
71-461**

March 31, 1971 (OPINION)

Mr. Neil Thompson

State's Attorney

Devils Lake, North Dakota

RE: Townships - Assessors - Abolishment of Office

This is in reply to your letter of 25 March 1971 inquiring as to the legal effect of Senate Bill No. 2466 passed as an emergency measure by the Legislative Assembly and duly signed by the governor as of the recent 1971 legislative session.

You indicate that the most populous township in your county took action thereunder to abolish the office of assessor at their annual meeting.

Your questions are stated as follows:

1. This type of business was not set out in the notice of election. Can it be acted upon without this specific notice being given prior to the election?
2. The County Director of Tax Equalization is not a resident of this County, nor an owner of real estate, or personal property within this specific township. Can he continue under the job of Township Assessor?
3. As of yet, I am not aware of a Senate or House bill passing this last session which would provide for compensation for this additional responsibility for the County Director. If there is no such bill, is he entitled to the pay as provided for the Township Assessor?
4. Does the Senate bill require that the Township Clerk must give the County Auditor notice, and if he does not give formal notice within the period specified, what happens?"

In response to your first question, we find no requirement in the statute that any special notice be given that this matter will be brought up at the township meeting. The notice of meeting specified in section 58-04-01 of the 1969 Supplement requires basically that the notice show time and place of holding the meeting, with no indication in that section as to any information as to the matters to be considered thereat. On such basis, it is our conclusion that the matter of abolishing the office of township assessor can be acted upon with no notice before the meeting that such matter will be acted upon at the meeting.

In response to your second question, the act provides that the county director of tax equalization or county assessor shall succeed to all of the powers and duties of the assessor that pertain to the

assessment of property for taxation purposes. It does not provide that he becomes the township tax assessor. We might point out further that the language of the act provides in effect that the vote at the meeting is for the purpose of "abolishing the office of assessor." On such basis, the county director of tax equalization taking over these powers and duties would not have to meet qualification necessary to hold the office of township assessor.

In response to your third question, we also have not found any legislation providing for compensation for this additional responsibility of the county director. It does not follow that the county director will be entitled to the salary of the former office of township assessor or to separate, additional compensation from the township being serviced. It is thus our conclusion that the only compensation the county director will receive for performing the work formerly done by the township assessor is his regular salary as county director of tax equalization. It is possible that the governing board employing the county director of tax equalization will consider the additional duties that have been imposed upon him by this legislative and township action in determining the salary that will be paid the county director; though also is not specified in the statutes.

In response to your fourth question, the senate bill does contain the language that:

* * * If the office of assessor is abolished, the township clerk shall within five days of such election certify that result to the county auditor and to the county director of tax equalization. The county director of tax equalization, or county assessor shall then succeed to all of the powers and duties of the assessor that pertain to the assessment of property for taxation purposes. * * *"

Under this terminology, it would appear that the county director or county assessor does not assume the powers and duties of the township assessor until such time as the formal certification of the result of the election is made by the township clerk. While the township clerk might be subjected to legal action for a failure to make the certification within the five-day period specified, we do not feel that a late certification would necessarily invalidate the action taken by the township meeting; though we do feel that abolition of this office of township assessor is not completed until such certification has been made.

We hope the within and foregoing will solve the problems you are faced with in the application of this act.

HELGI JOHANNESON

Attorney General