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Digest of Attorney General Opinions

North Dakota Law Review

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DIGEST OF ATTORNEY GENERAL OPINIONS

GOVERNMENTAL SUBDIVISIONS—CERTIFICATION OF TAX LEVY November 30, 1964

Once a levy has been made by a governmental subdivision and certified to the county auditor, the subdivision cannot thereafter and in the current year either increase or decrease the levy, except as may otherwise be specified by statute. However, a statute need not state specifically when a levy change becomes effective for it to take effect after the initial certification of the levy for a current year.

Nor has an auditor any discretionary authority to accept or reject the change in levy after the time for fixing levies has expired. The auditor must accept the change in levy, within practicable limits, where presented prior to December 31 of the current year and he acts only as a ministerial officer in making the change in the tax list.

COMMERCIAL CARRIERS—AGRICULTURAL CARRIER CERTIFICATES— EXEMPTION FROM REQUIREMENT OF OBTAINING December 4, 1964

Contrary to a position taken by the North Dakota Public Service Commission, the opinion concludes that commercial carriers who transport property between farms and the usual local trading places of the farmer for whom the transportation is performed, or between farms locally, are not required to obtain agricultural carrier certificates.

Chapter 311 of the 1947 Session Laws amended chapter 49-19-02(3) of the North Dakota Century Code to exempt carriers *for hire or otherwise* from obtaining certificates to transport property between farms and the farmers' usual local trading places or between farms locally. Since under the act prior to amendment, farmer-owners or associations who transported such property already were exempt, the amendment extending the exemption must be construed to apply to other persons.

Furthermore, since section 49-18-44 of the Century Code provides

a penalty for any person violating section 49-18, failure to secure an agricultural carrier permit would constitute a crime if such permit were required, so the statute must be strictly construed in favor of the person charged with having violated it.

**WATER MANAGEMENT DISTRICTS—TAKING LAND
FOR DRAINAGE DITCH
December 29, 1964**

Taking of land by a water management district for a drainage ditch constitutes the acquisition of "right of way" and the district may take possession upon making an offer to purchase and depositing the amount offered with the clerk of district court in the county where the right of way is located.

As to the question of whether such land can be removed from the tax rolls when an easement is secured, there does not appear to be any statute directing such removal. However, if the total value of the tract of land is diminished by the drainage ditch the taxes would naturally be lower, and if the drainage ditch raised the value of the land the taxes would be increased. The assessor would make the initial determination as to whether the drainage ditch raised or lowered the value.

**SCHOOL BOARDS—PAYMENT OF TUITION TO ANOTHER
DISTRICT—APPEAL FROM ORDER OF COUNTY COMMITTEE
January 7, 1965**

A school board of the district of residence of a student which refuses to pay tuition charges to another school district for attendance of the student at the high school of such other district and has been ordered to do so by the county committee can appeal the question to the State Board of Public School Education.

Section 15-40-17 of the North Dakota Century Code provides that the decision of the county committee in such cases may be appealed to the State Board and that the decision of the Board shall be binding *upon all parties*. Since the district of residence is obviously a party it would appear to have the right to appeal from a decision of the county committee. Since the legislature has seen fit to permit an appeal from the county committee to the State Board it would not seem reasonable to permit an appeal by one of the parties concerned and not permit an appeal by the other.

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