

From: Staricha, Lance R (MDOR) [mailto:lance.staricha@state.mn.us]
Sent: Thursday, June 23, 2011 9:52 AM
To: Kevin Sandstrom
Cc: Volkert, Deb (MDOR)
Subject: Local assessor reinstatements

Mr. Sandstrom,

Here is some information on the Dept. of Revenue's position in this matter.

The current Minn. Stat. 270C.99 was enacted in 2005 (Laws 2005, chap. 151, art. 1, sec. 113). Prior to that time, the same provisions were codified as Minn. Stat. 270.494 (see Laws 2005, chap. 151, sections 113 and 117). In 1994, the statute said:

Notwithstanding the provisions of sections 270.49, 270.493, and 273.05, subdivision 1, a city or township in which the office of assessor has been eliminated because of failure of the city or township to certify by resolution to the commissioner of revenue its intention to employ or continue to employ a certified assessor on or before April 1, 1972, pursuant to section 270.49, or failure to hire a certified assessor prior to June 15, 1975, pursuant to sections 270.493 and 270.50, or failure to fill a vacancy in the office within 90 days pursuant to section 273.05, subdivision 1, may elect, with the approval of the commissioner, to have the office of assessor reinstated by hiring a certified or accredited assessor. This section shall not apply to Ramsey county or to cities and townships located in counties which have elected a county assessment system in accordance with section 273.055.

You will note that under the law at that time, the commissioner of revenue could approve a reinstatement of the office of local assessor if the office had previously been eliminated for any one of three different reasons: (1) failure to certify an intention to employ by April 1, 1972 as required by Minn. Stat. (1994) section 270.49; (2) failure to hire a certified assessor prior to either December 1, 1974 or June 15, 1975 as required by Minn. Stat. (1994) section 270.493 or 270.50, whichever applied; or, (3) failure to fill a vacancy within 90 days as required by Minn. Stat. (1994) section 273.05.

Subsequent to 1994 (i.e., Laws 1995, chap. 264, art. 16, sec. 4, effective June 2, 1995), section 270C.99 was amended to eliminate the authority of the commissioner to approve a reinstatement for the reasons denoted as (1) and (2) immediately above. Thus, at the current time the only authority the commissioner has, is the authority to approve the reinstatement of the office if the **only** reason the office doesn't exist is because of a vacancy of over 90 days.

Stated alternatively, since June 2, 1995 (the effective date of the 1995 amendments), when acting to approve the reinstatement of the office of local assessor under section 270.494 (now 270C.99), the commissioner can no longer "waive" the requirement that the city or town have done one of the following prior to having a vacancy of 90-plus days: (1) made a certification of intent to maintain the office by 4/1/72 as required by Minn. Stat. (1994) section 270.49, and hired a certified assessor by June 15, 1975 as required by Minn. Stat. (1994) section 270.50; (2) hired a certified assessor by December 1, 1974 as allowed by Minn. Stat. (1994) section 270.493; or, (3) reinstated the office under Minn. Stat. section 270.494 (i.e., despite not having done one of preceding two things), prior to that statute's amendment in 1995.

Our records indicate that the city of Birchwood Village did none of those things. The consequence for the city is that it lost its authority to employ a local assessor on Dec. 1, 1972, because: it did not file a certification by Nov. 30, 1972, pursuant to Minn. Stat. (1972) section 270.49; and, the office was not reinstated, either pursuant to Minn. Stat. (1974) section 270.493, or pursuant to Minn. Stat. section 270.494 prior to its amendment in 1995.

Because the termination of the office of local assessor for the city was not caused by a vacancy of more than 90 days, the commissioner of revenue has no authority to approve a reinstatement of the office of local assessor for

the city of Birchwood Village. There is simply no other plain meaning for the words in Minn. Stat. (2011) section 270C.99.

Neither is there another statute under which the city could, without the commissioner's approval, reinstate the office by other means. The county board of a county that currently has the county assessor doing all the assessments could, by resolution, terminate the "true county" system for that county, thereby reinstating all the offices of local assessor within that county under Minn. Stat. (2011) section 273.056; but, there is no comparable, or complementary, authority in law that we are aware of, for a city to reinstate its office of local assessor – except with the approval of the commissioner, and then only if the office was eliminated because of a vacancy of over 90 days.

The lack of an overt prohibition against cities reinstating a terminated office of local assessor in situations other than a vacancy of over 90 days, does not amount to the authority to do so. Cities are creatures of the legislature, and may only exercise those authorities which the legislature confers. *Cohasset v. Minnesota Power*, 776 N.W.2d 776, 783 (Minn. COA, 2010), reversed June 1, 2011, ___ N.W.2d ___, WL 2135599. And, where the state legislature has preempted the field, as in this matter, a municipal ordinance that conflicts with state law cannot operate. *Minnetonka Electric Co. v. Golden Valley*, 273 Minn. 301, 141 N.W.2d 138, 140 (1966).

The repeal of Minn. Stat. sections 270.49 and 270.493 in 1995 (Laws 1995, chap. 264, art. 16, sec. 21) did not have the effect of un-doing the office-terminations that occurred under the terms of those statutes prior to the effective date of those repeals. To argue that it did, would be comparable to arguing that the repeal of the penalty in Minn. Stat. (1994) section 270.70, subd. 9 (Laws 1995, chap. 264, art. 13, sec. 23), effective June 2, 1995, meant that those who paid the penalty while that statute was in effect should get their money back after its repeal. Such a result would have required a retroactive effective date. Otherwise, the repeal of a law does not affect any right, duty, or penalty already incurred under the law that is repealed. Minn. Stat. (2011) section 645.35. Simply put, the elimination of the 1972, 1974, and 1975 deadlines in 1995 – i.e., after the time by which the consequences of not meeting those deadlines had already occurred, did not un-do those consequences.

Given the plain meaning of the current and prior legislative enactments on this subject, it is not necessary, or even allowed, to speculate about why the legislature would have acted as it did. However, even if one does that, it is clear that the legislature does intend that cities and organized towns that lost their local assessor office due to inaction in 1972, 1974, or 1975 (and subsequently up to and including 6/1/95), are *not* free to reinstate that office at their pleasure.

The deadlines in the prior statutes (and the amendment of section 270.494 in 1995), were part of an intentional effort by the legislature to move cities and organized towns from a system of local assessors (with the county assessor as a supervisor of them), to a system where all assessments are done by a singular, county assessor. "Countywide assessment has several advantages over assessments by individual local jurisdictions." Final Report of the Minnesota Tax Study Commission (Butterworths 1986), Vol. 1, pg. 275.

When Minn. Stat. sections 270.49 and 270.493 were repealed in 1995 (Laws 1995, chap. 264, art. 16, sec. 21), the department treated those changes as technical law changes that eliminated "obsolete deadlines." Summary of 1995 Property Tax Laws, June, 1995, pg. 1. That is still our position.

Even if it is correct to view Minn. Stat. (2011) 270C.99 as allowing any city or town to reinstate the office of local assessor after a 90-plus day vacancy – irrespective of any prior terminations of the office under sections 270.49 or 270.50, which were not cured prior to 6/2/95 under either section 270.493 or 270.494 (now 270C.99); that still leaves the city or town needing the commissioner's approval. It is impossible to predict what determination the commissioner would make in this case, since it would be a quasi-judicial determination based in large part on the specific facts of the situation, some of which may not yet have been presented to the commissioner; but, the commissioner's approval should perhaps not be thought of as being automatic, given that some experts believe that assessments done under the "true county" system described in Minn. Stat. section 273.052 tend to be of

higher quality at a lower per-unit cost. Final Report of the Minnesota Tax Study Commission (Butterworths 1986), Vol. 1, pg. 275.

I hope this has been helpful. Thank you.

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From: Staricha, Lance R (MDOR) [mailto:lance.staricha@state.mn.us]
Sent: Thursday, June 23, 2011 11:13 AM
To: Kevin Sandstrom
Cc: Hagen, John (MDOR); Volkert, Deb (MDOR)
Subject: Birchwood, followup question

Mr. Sandstrom,
You called today to ask what the Dept. of Revenue would do if the city went ahead and hired a local assessor despite our opinion that they do not appear authorized to have the office of local assessor.

We can't answer that. We haven't made that determination, and it is unlikely that we would, or could, do that in the next few days given all the activities we have going on related to the potential shutdown.

Additionally, I personally don't remember if there has been a comparable past situation that I could recount for you what happened.

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From: Staricha, Lance R (MDOR) [mailto:lance.staricha@state.mn.us]
Sent: Thursday, June 23, 2011 12:23 PM
To: Kevin Sandstrom
Subject: RE: Birchwood, followup question

This is strictly off the cuff and my own personal response.

We can't answer that unless we know the issue. I'm not sure there would be an issue to resolve if the county did the assessment under MS 273.05 and the city hired its own "appraiser" for some reason. Here is one, of several, provision that might supply what you are asking about.

exercise general supervision over the administration of the property tax laws, assessors, town, county, and city boards of review and equalization, and all other assessing officers in the performance of their duties, to the end that all assessments of property be made relatively just and equal in compliance with the laws of the state. (MS 270C.92, subd. 1).

From: Kevin Sandstrom [mailto:KSandstrom@eckbergglammers.com]

Sent: Thursday, June 23, 2011 11:28 AM

To: Staricha, Lance R (MDOR)

Subject: Re: Birchwood, followup question

Thanks for the emails lance. As a threshold issue, would the DOR have standing to sue the city to determine this issue? I assume it would be either the DOR or county auditor.

Kevin Sandstrom