

N.D.A.G. Letter to Woods (Dec. 17, 1985)

December 17, 1985

Mr. William E. Woods, Jr.
Parshall City Attorney
P.O. Box 7
Parshall, ND 58770

Dear Mr. Woods:

Thank you for your letter of September 10, 1985, wherein you inquired about the taxable status of a certain land description located within the city of Parshall and which is the subject of an application for abatement from taxation that has been filed pursuant to the provisions of N.D.C.C. Ch. 57-23. I apologize for the delay in responding to you.

While action on this matter is to be taken by the Board of County Commissioners, the city of Parshall apparently would like to make a recommendation to the Board of County Commissioners pursuant to N.D.C.C. §57-23-06(2).

As I understand the facts from your letter, the land in question is owned in fee patent by a Native American Indian who is an enrolled member of the Three Affiliated Tribes. Furthermore, the land is located within the exterior boundaries of the Fort Berthold Indian Reservation.

Your question is whether this land is exempt from county real property taxation because of the nature of its ownership.

In N.D. Op. Att'y. Gen. 85-12, I concluded ". . . that real property owned in fee patent by an Indian tribe and located within the boundaries of the tribe's reservation is not subject to county real property taxation."

There is no United States Supreme Court decision which has directly answered this question. However, in the "analysis" section of N.D. Op. Att'y. Gen. 85-12, it was noted that the Arizona Supreme Court has held that land owned in fee by enrolled Navajo tribal members and located within the boundaries of Navajo reservation was exempt from state ad valorem taxation. Battese v. Apache County, 630 P.2d 1027, 1029 (Az. 1981). Because the land in Battese, supra, was not allotted, but was homesteaded by a non-Indian, the Arizona Court apparently did not consider the provisions of 25 U.S.C. §349.

25 U.S.C. §349 provides that land allotted to an Indian by the Secretary of Interior becomes subject to taxation upon issuance, acceptance, and recording of the fee patent. With this understanding, it must be remembered that the United States Supreme Court has cautioned that 25 U.S.C. §349 must not be used by the states to establish a pattern of

"checkerboard jurisdiction" over Indian reservations. Moe v. Confederated Salish & Kootenai Tribes, etc., 425 U.S. 463, 478 (1976).

Nevertheless, it is apparent that each of these cases must turn on its own set of facts.

Therefore, the chain of title to the land in each case, including the one currently before your Board of County Commissioners must be thoroughly examined before the taxable status of the land can be decided.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

cv