

N.D.A.G. Letter to Jones (May 28, 1987)

May 28, 1987

Mr. Wayne P. Jones
Ransom County State's Attorney
P.O. Box 391
Lisbon, ND 58054

Dear Mr. Jones:

Thank you for your letter of May 6, 1987, wherein you inquire about the tax exemption for new industries and N.D.C.C. ch. 40-57.1. Specifically, you wish to know whether a municipality can grant an extension of an ad valorem tax exemption for new industry beyond five years from the date of commencement of project operations.

N.D.C.C. ch. 40-57.1 provides that a municipality may grant a property tax exemption, not exceeding five years, for certain types of new business projects. For purposes of this chapter, "municipalities" include counties and cities. N.D.C.C. § 40-57.1-02. These grants of exemption are subject to the approval of the State Board of Equalization. N.D.C.C. § 40-57.1-03.

Specifically, N.D.C.C. § 40-57.1-03 provides, in part, that "[m]unicipalities are . . . authorized and empowered . . . to grant . . . partial or complete exemption from ad valorem taxation on all tangible property used in . . . the operation of a project for a period not exceeding five years from the date of commencement of project operations. . . ." (This language was not amended by the 1987 Legislative Assembly.)

A 1969 Attorney General's opinion concluded that, looking to N.D.C.C. ch. 40-57.1 as a whole and its purposes, the "date of commencement of project operations" would be the date the plant actually goes into its planned operations. 1969 N.D. Op. Att'y Gen. 415, 418.

Furthermore, "[i]t is well settled that provisions exempting property from taxation are to be strictly construed; that their operation should not be extended by construction; and that the power and right of the state to tax are presumed and the exemption must be clearly granted." Evangelical Lath. G. S. Sac. v. Board of Cay. Com'rs, 219 N.W.2d 900, 904 (N.D. 1974) (quoting Lutheran Camp. Coun. v. Board of Co. Com'rs, Ward Co., 174 N.W.2d 362, 363 (N.D. 1970) (syllabus para. 1)).

There is no provision in N.D.C.C. Ch. 40-57.1 which would authorize an extension of a tax exemption beyond five years from the date of commencement of project operations.

Therefore, it is my opinion that a municipality cannot grant an extension of an ad valorem tax exemption for new industry beyond five years from the date of commencement of

project operations.

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

Sincerely,

Nicholas J. Spaeth

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