

N.D.A.G. Letter to Olson (Feb. 10, 1992)

February 10, 1992

Mr. Lonnie W. Olson
Ramsey County State's Attorney
524 Fourth Avenue #16
Devils Lake, ND 58301

Dear Mr. Olson:

Thank you for your November 5, 1991, letter wherein you inquire whether a mobile home dealer is subject to the provisions of North Dakota Century Code §§ 57-55-11(2) and 57-55-18 which relate to the enforcement of the tax on mobile homes.

N.D.C.C. § 57-55-11(2) provides:

57-55-11. Collection - Enforcement - Penalty.

. . . .

2. Before a mobile home is moved from its existing location, a moving permit must be obtained by the owner from the county director of tax equalization indicating that all taxes, penalties, and interest levied against the mobile home have been paid. While the mobile home is being transported, the moving permit must be displayed on the rear of the mobile home. Any person who violates this provision is guilty of an infraction, for which a fine of no less than one hundred dollars and no more than five hundred dollars may be imposed.

(Emphasis supplied.)

Legislative history may be considered when determining the meaning of an ambiguous statute. N.D.C.C. § 1-02-39(3). In order to determine whether a person other than the owner can be found guilty of an infraction for transporting a mobile home without a moving permit, it is necessary to review the legislative history. N.D.C.C. § 57-55-11(2) was amended to its present form by the 1987 Legislative Assembly. 1987 Sess. Law ch. 727, House Bill 1568.

At the February 5, 1987, hearing of the House Committee on Transportation on House Bill 1568, Mr. Clayton Gilore, a hauler and dealer in mobile homes, testified that the person transporting a mobile home should not be responsible for the taxes on it. At a February 11, 1987, meeting of the House Committee on Transportation, the Committee amended House Bill 1568 to insert the words "by the owner" after the words "a moving permit must be obtained" so that the responsibility is limited to the owner, thereby excluding the mover

from liability. Finally, at the March 6, 1987, hearing of the Senate Committee on Transportation, Senator Nething recognized that the owner has the responsibility to obtain the moving permit.

This expressed legislative intent is consistent with the following exclusionary language of N.D.C.C. § 57-55-10(2)(d):

57-55-10. Exemptions - Exceptions.

. . . .

2. The provisions of this chapter shall not apply to a mobile home which:

. . .

- d. Is owned by a licensed mobile home dealer who holds such mobile home solely for the purpose of resale, and provided that such mobile home is not used as living quarters or as the place for the conducting of any business.

Therefore, only the owner of a mobile home can be found guilty of an infraction under N.D.C.C. § 57-55-11(2) for transporting a mobile home without a moving permit. This provision does not apply to a mobile home dealer, although he is the owner of the home, who holds a mobile home for resale.

A mobile home dealer who sells a mobile home under a conditional sales contract is subject to N.D.C.C. § 57-22-18(2). That section provides:

57-22-18. Conditional sales - Taxes payable before change of possession. If personal property has been sold or transferred under a conditional sale contract, the owner, holder, or assignee of such contract shall not attach nor repossess such property nor acquire it by bill of sale, on account of the cancellation or foreclosure of such contract, until the taxes levied upon the said property have been paid as follows:

. . . .

2. For mobile homes subject to tax under chapter 57-55, the tax levied upon the property for the current year and the most recent preceding year must be paid in full.

The exemption for mobile home dealers created by N.D.C.C. § 57-55-10(2)(d) is limited to the provisions of N.D.C.C. ch. 57-55. Therefore, N.D.C.C. § 57-55-10 does not serve to exclude a mobile home dealer from the requirements of N.D.C.C. § 57-22-18(2). It is

therefore my opinion that delinquent property taxes due must be paid before a mobile home dealer may repossess a mobile home.

Sincerely,

Nicholas J. Spaeth

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