

**OPINION
68-265**

February 23, 1968 (OPINION)

Mr. Edwin Sjaastad

Tax Commissioner

RE: Taxation - Exemptions - Head of Family

Re: House Bill No. 558

Chapter 420, 1967 Session Laws

This is in response to your letter in which you ask for an opinion on Chapter 420 of the 1967 Session Laws, as enacted through House Bill No. 558. You state, "on the basis of an examination of the history of this law, it is obvious that only inept draftsmanship by the sponsor of the legislation is responsible for such a result." You then specifically ask whether or not a widow or widower and any other person having no dependents is entitled to the exemption provided by Chapter 420 of the 1967 Session Laws, if such person is otherwise qualified.

The Act in question, as is material here, provides as follows:

"* * * The assessor shall show upon his listing blank the name of every head of a family. For the purpose of this section, any person who has one or more others dependent upon him for support shall be regarded as the head of a family. If the total value of the personal property of such person at the time of assessment does not exceed one hundred dollars, and his total income during the preceding twelve months has been less than six hundred dollars, his personal property shall be exempt from taxation. After the assessor's valuation of such property shall have been equalized, the county auditor shall cause the names of such heads of families to be removed from the tax roll as exempt from personal property taxation. The personal property of any person who receives a major part of his income from any state or federal public assistance program shall be exempt from taxation and the name of such person, if certified to the county auditor by the county welfare board, shall be removed from the personal property tax roll. Any person exempt from personal property taxation under this section, and any dependent of such person, shall also be exempt from the per capita school tax, and such tax if levied shall be canceled by the county auditor.

"The household goods, clothing, and musical instruments, of a head of a family, as defined in subsection 1 of this section over the age of sixty-five with an income of three thousand dollars or less per annum from all sources, shall be exempt from personal property taxation. Any person eligible for the exemption herein provided shall sign a statement that he is over the age of sixty-five and that his income does not exceed three thousand dollars per annum. Any person falsely signing

such statement shall be guilty of a misdemeanor. The assessor shall attach such statement to the assessment sheet and forward a copy to the state tax department." (Emphasis supplied.)

The expression "a head of a family, as defined in subsection 1 of this section," as found in subsection 2, clearly and unmistakably disclosed that the term "a head of a family" is to have the same meaning as given to such term in subsection 1 of the Act, which is underscored above. The term "a head of a family" in subsection 1 is defined as follows: "For the purpose of this section, any person who has one or more other dependent upon him for support shall be regarded as the head of a family."

We have examined all extrinsic aids available. We find from the minutes of the Committee on Finance and Taxation, to which House Bill No. 558 was referred, that the bill was initially considered on January 6, 1967, without any specific action. It was again considered on January 9, 1967, at which time the sponsor of the bill explained the intent and purpose of the bill. It was suggested that in line 18 after the "comma" and following the word "family", omit "as defined in subsection 1 of this section", and on line 27 remove the word "the". The question was then asked if "head of the family" would exclude widows or widowers. It was then suggested that this could read, "any person." It was also suggested that anyone over sixty-five be covered by the Act. No definite action was taken on the bill.

The bill was again considered on January 7, 1967, at which time information was made available as to the revenue involved. The bill was again considered on January 23, 1967, at which time the sponsor of the bill suggested that the Legislative Research Committee be asked to prepare an amendment to include the per capita poll tax in line 27 and suggested an amendment to delete the first word, "The", delete line 28 and insert "Any person or family", whereupon he was advised by the attorney representing the Tax Department that this would not read correctly.

The bill was again considered on February 7, 1967, where a motion was made and carried to indefinitely postpone. There was then a motion to reconsider, which apparently carried because a subsequent motion was made to give the bill a "do pass", which carried. The bill as reported out by the committee was without any amendments. The minutes of the committee clearly indicate that the specific question now under consideration was discussed by the committee and that the committee was aware that the bill, as introduced, would not provide an exemption to any person over sixty-five years of age, unless there were other dependents who were dependent upon said person for support.

The bill as introduced was considered by the Legislature, and the House and Senate Journals indicate that no amendments were proposed or made to House Bill No. 558. It is interesting to note that suggestions were made to the committee to amend the bill so as to give an outright exception to persons sixty-five years of age or older having an income of less than three thousand dollars, etc., but such amendments never materialized beyond the point of suggestion. The minutes do not disclose that an amendment was actually proposed.

We have been provided with a form identified as "Tax Com. Form No. - P.P. - Ex. - 1. 1968", which is a printed statement prepared for the signature of the taxpayer claiming the exemption. This form substantially recites the provisions of section 57-02-21(2) and contains, amongst other things, the following information: "(Note: To qualify as the head of a family, the person must have one or more persons dependent upon him or her for support.)." The form also contains the statement: "He or she is the head of a family as defined by section 57-02-21, N.D.C.C.", after which follows the above note. This form apparently was prepared as the result of the dictates of Chapter 420. The form clearly indicates that the Tax Department, at some time after the passage of the Act (House Bill No. 558), construed the language to mean that a person must have one or more dependents for support to qualify.

The language in question is clear and unambiguous. The various rules of law relating to construction of statutes are all in accord that language which is clear and unambiguous is not subject to construction. The same rules of law also permit the use of extrinsic aids to resolve a doubt or to determine the meaning of an ambiguous statute. However, before such aids may be used to construe a statute, the language must be ambiguous or unclear.

While resort to extrinsic aids is permissible to resolve a doubt in an ambiguous statute, such resort is not permissible to create a doubt where the language is clear and unambiguous.

Every rule of construction which we have examined, and the minutes of the committee, militate against construing the statute in a manner other than the clear meaning derived from the language used. We are basically sympathetic towards the widows and widowers, but fortunately or unfortunately this office does not have legislative powers. We are confined to construing the laws as enacted by the Legislature. Were this office granted legislative authority, we would not be reluctant to conclude otherwise, but this is not the situation.

We are, therefore, compelled to conclude from the clear and unambiguous language that a widow or widower is not entitled to the exemption provided for in Chapter 420 or the 1967 Session Laws, where such person does not have any other persons dependent upon him for support.

HELGI JOHANNESON

Attorney General