

**OPINION
68-390**

November 26, 1968 (OPINION)

Mr. Carl Jensen

Claims Division

Department of Veterans' Affairs

RE: Taxation - Disabled Veterans Exemption - Residence

This is in reply to your letter of November 9, 1968, in which you state the following question:

We would like to have an Opinion as to whether or not a totally disabled veteran would be eligible for tax exemption under Code 57-02-08 if the veteran did not physically live within the state or on the property and whether or not the veteran, in order to apply for homestead rights, would have to physically reside on the property."

We assume you have reference to Subsection 20 of Section 57-02-08 of the North Dakota Century Code, as amended, which provides:

PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

* * *

0. Fixtures, buildings and improvements upon lots in any city or village up to a net assessed valuation of ten thousand dollars for paraplegic disabled veterans, and four thousand dollars or in the alternative personal property up to an assessed valuation of four thousand dollars, used and owned as a homestead, as defined in section 47-18-01, by any other disabled veteran who was discharged under honorable conditions or who has been retired from the armed forces of the United States with a service connected disability greater than fifty percent, or his unremarried widow if such veteran is deceased, provided, however, that such veteran and his wife, or if such veteran is deceased his unremarried widow, do not earn more than three thousand dollars net income exclusive of any pension for service connected disability from the United States government during the calendar year for which such exemption is claimed, and who shall have a certificate from the United States veterans administration, or its successors, certifying the amount of his disability. * * *".

* * *."

It would appear that the provision relative to use and ownership as a homestead, as defined in Section 47-18-01, is applicable only to disabled veterans other than paraplegic disabled veterans.

Therefore, if you have in mind a paraplegic disabled veteran, the exemption applies regardless of residence.

Insofar as other veterans eligible for an exemption under this provision are concerned, Section 47-18-01 of the North Dakota Century Code, as amended, provides:

'HOMESTEAD' DEFINED - EXEMPTION. The homestead of every head of the family residing in this state shall consist:

"1. If within a town plat, of not to exceed two acres of land upon which the claimant resides, and the improvements thereon, and not exceeding in value forty thousand dollars over and above liens or encumbrances or both.

"2. If not within a town plat, of not to exceed in the aggregate more than one hundred sixty acres, and the dwelling house situated thereon in which the homestead claimant resides, with all its appurtenances and all other improvements on said land regardless of the value of the same.

"Such homestead shall be exempt from judgment lien and from execution or forced sale except as otherwise provided in this chapter. In no case shall the homestead embrace different lots or tracts of land unless they are contiguous."

The claimant must reside upon the property in order to claim the exemption. This does not mean he must be physically present at all times, but he must retain the property as his residence. If he does not maintain a residence on the property, he could not claim the exemption.

Since your letter is concerned with a totally disabled veteran, we would again note that, for paraplegic veterans, there is no requirement that the property be used as a homestead. This requirement applies only to other disabled veterans who meet the other requirements of Section 57-02-08(20).

HELGI JOHANNESON

Attorney General