

Office of the Attorney General
State of North Dakota

Opinion No. 81-116

Date Issued: October 30, 1981

Requested by: John F. Schmitz, Superintendent of
Stanton Public School, at the request of Mercer County State's
Attorney

--QUESTIONS PRESENTED--

I.

Whether a person, who as a condition of employment resides on real property owned by a school district, is subject to real property taxation on the value of the interest held in such real property.

II.

Whether such a person, if subject to such real property taxation, is personally responsible for payment of those taxes.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that even though a person resides on real property owned by a school district as a condition of employment, that person is nevertheless subject to real property taxation on the value of the interest held in such real property.

II.

It is my further opinion that such a person is personally responsible for payment of such real property taxes.

--ANALYSIS--

I.

Real property located in North Dakota and owned by a North Dakota school district is exempt from taxation under Article X, § 5 of the North Dakota Constitution and Section 57-02-08(3) of the North Dakota Century Code. However, this exemption does not apply to an otherwise nonexempt individual who has a leasehold or other possessory interest in real

property owned by a North Dakota public school district. Privately held rights and privileges in real property owned by the government are required by Sections 57-02-03(1) and 57-02-04(1)(2), N.D.C.C., to be taxed unless otherwise exempted from taxation by some provision of law. The North Dakota Supreme Court has so held in *Otter Tail Power Company v. Degnan*, 252 N.W. 619 (N.D. 1934); and *Lower Yellowstone Irrigation District Number Two v. Nelson*, 2 N.W.2d 180 (N.D. 1941). No other North Dakota statute exists that specifically provides such an exemption.

The cases cited above do not specifically involve the question of whether an individual who is required to live in housing owned by the government as a condition of employment has a taxable interest in that property. However, in *United States v. County of Fresno*, 429 U.S. 452, 97 S. Ct. 699 (1977), the United States Supreme Court upheld a California law under which federal employees were required to pay an 'annual use or property tax on possessory interests' which they held in federally owned houses in which they were required to live in order to be located close to their work and better perform their duties. Likewise, the California Court of Appeals, when applying statutes similar to those of North Dakota, held that an employee of a tax exempt public agency had a taxable interest in a residence which he rented from the agency even though such use and possession was conditioned upon his employment. *McCaslin v. DeCamp*, 56 Cal. Rptr. 42 (1967); also see *United States v. County of Humboldt, Cal.*, 628 F.2d 549 (9th Cir. 1980).

A school district employee, who is required to live in a residence owned by the public school district, has a taxable interest in that property.

II.

With regard to the extent of responsibility such an individual has for any possessory interest tax assessment, the possessory interest first should be properly described in the real property assessment books so that there will be a valid assessment against it.

Then, if the real estate taxes on such a possessory interest are not paid, tax sale proceedings against the described assessed possessory interest can be taken by the county in the same way as for any other delinquent real estate taxes. Although delinquent real estate taxes are, in general, collectible only through the usual real estate tax sale proceedings, delinquent real estate taxes on a leasehold or other possessory interest in exempt real property are also collectible as a personal charge in the same way as delinquent personal property taxes are collected. Section 57-24-31, N.D.C.C.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald

Attorney General

Prepared by: Robert W. Wirtz
Assistant Attorney General