

Date Issued: February 12, 1981 (AGO 81-13)

Requested by: Charles D. Orvik, Pierce County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether land purchased by a church on which no church structure exists and on which no religious services have been held is eligible for a real estate tax exemption for any part of the year of purchase or any year subsequent thereto in which the conditions remain the same.

II.

Whether a church structure and related improvements constructed on two or less acres of ground entitle the larger remainder of the eight-acre tract owned by the church to be eligible for a real estate tax exemption.

III.

Whether the use by a church of more than two acres of land for religious purposes qualifies the land greater than two acres so used to be entitled for a real estate tax exemption.

IV.

Whether section 57-02-14.1 of the North Dakota Century Code applies to a church property not located within the limits of a city.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that land owned by a church on which no church structure exists, and on which no religious services have been held, does not qualify for a real estate tax exemption during the year of purchase or any subsequent year thereafter when the conditions remain the same.

II.

It is my further opinion that if a church does not use more than two acres of a larger eight-acre tract for religious purposes, then only so much of the larger tract as is used for religious purposes up to two acres shall be eligible for a real estate tax exemption.

III.

It is my further opinion that if a church uses real property in excess of two acres for religious purposes all the land so used even though it is in excess of two acres is eligible for a real estate tax exemption provided that the use of the real property by the church is reasonably necessary and that it is actually used exclusively for religious purposes.

IV.

It is my further opinion that the requirements of section 57-02-14.1, N.D.C.C., do not apply to real property owned by a church not within the limits of a city.

- ANALYSIS -

I.

Section 5 of Article X (formerly Section 176) of the Constitution of the state of North Dakota provides that "property used exclusively for . . . religious . . . purposes shall be exempt from taxation." Section 57-02-08, N.D.C.C., supports the Constitution by creating the statutory exceptions contemplated by the Constitution in subsections 7 and 9 thereof. Subsection 7 exempts "all houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected. . . ." Subsection 9 exempts "all real property, not exceeding two acres in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization. . . ."

If a tract of land or a portion of it that has no building on it were used exclusively for outdoor religious services, the portion reasonably necessary for those services would be exempt under Section 5 of Article X of the North Dakota Constitution. So long as no religious buildings were constructed on the real property any claim for an exemption from real estate taxes would have to be based on a showing under Section 5 of Article X of the North Dakota Constitution that that part of the tract on which a real estate tax exemption was claimed was used exclusively for religious purposes. That determination is made with reference to the facts on the assessment date of February first of each year established in section 57-02-11(1), N.D.C.C. See *Gaar, Scott & Co. v. Sorum*, 90 N.W. 799 (N.D. 1902), and *United Telephone Mutual Aid Corp. v. State*, 87 N.W.2d. 54 (N.D. 1957).

II.

Subsection 9 of section 57-02-08, N.D.C.C., limits the exemption for land to two acres.

III.

If more than two acres of land are used exclusively for religious purposes, the acreage so used would be exempt under Section 5 of Article X of the Constitution and would not be limited to the two-acre exception created by subsection 9 of section 57-02-08, N.D.C.C. In a conflict between a statute and a provision of the Constitution, the Constitution prevails.

IV.

Section 57-02-14.1, N.D.C.C., requires the owner of real property within a municipality who claims it is exempt from taxation to annually file with the assessor and county auditor a certificate in which is set out all the facts on which the claim of exemption is based. This statute was enacted in 1967. Section 57-02-14.1, N.D.C.C., applies to real property within a "municipality." It soon became necessary to determine whether "municipality" meant "municipality" as defined in section 40-01-01(1) to mean only a city or whether it meant "municipality" as defined in section 57-02-01(6), N.D.C.C., to mean any political subdivision empowered to levy taxes. Apparently when the 1967 legislative committees considered the bill before it became law, both the committee members and those supporting the bill understood that the annual certificate requirement was intended to apply only to real property within a city; because of that, the tax officials have interpreted it as applying only to real property within a city. That interpretation is a reasonable interpretation and should be continued. Accordingly, real property owned by a church not located within the city limits is not subject to the filing requirements of section 57-02-14.1, 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 or the applicable provisions of law are amended or repealed.

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