

Date Issued: June 11, 1981 (AGO 81-58)

Requested by: Cynthia A. Rothe
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- QUESTION PRESENTED -

Whether a residence owned by a church and rented by a nonprofit corporation for use as a halfway house qualifies as property exempt from taxation under subsection 8 of section 57-02-08 of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a residence owned by a church and rented by a nonprofit corporation for use as a halfway house does not qualify as property exempt from taxation either under subsection 8 of section 57-02-08, N.D.C.C., or other exemption provisions in the law.

- ANALYSIS -

Subsection 8 of section 57-02-08, N.D.C.C., provides an exemption from taxation for property belonging to an institution of public charity and used by it for public charity. The claimant of an exemption for property under this subsection therefore must both own the property and use it for public charity. Although it appears that the nonprofit corporation is using the residence it rents for public charity, it cannot establish its claim to the exemption because it does not own the property. Y.M.C.A. of North Dakota State University v. Board of County Commissioners, 198 N.W.2d. 241 (N.D. 1972).

If the exemption for the residence is claimed by or on behalf of the church organization that owns the property, that claim of exemption must also fail, whether made under subsection 8 of section 57-02-08, N.D.C.C., or under subsections 7 or 9 of that section. It would fail under subsection 8 because the church as owner is not using the residence for public charity but is using it to produce rental income. See Y.M.C.A. case cited above.

A claim of exemption by or on behalf of the church under subsections 7 and 9 of section 57-02-08, N.D.C.C., would likewise fail because, although the church meets the ownership test prescribed in those subsections, it would not meet the use test prescribed in those subsections because it would not be using the residence property either for a parsonage or for public worship (subsection 7) or for religious services (subsection 9). See Lutheran Campus Council v. Board of County Commissioners Ward County, 174 N.W.2d. 362 (N.D. 1970).

- 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.

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