

Office of the Attorney General
State of North Dakota

Opinion No. 81-81

Date Issued: August 3, 1981

Requested by: Richard P. Gallagher
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--QUESTION PRESENTED--

Whether the real property located in a city is exempt from ad valorem property taxation if its primary use is religious services of that organization or for the residence of the clergyman in charge of such services.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that real property located in a city is exempt from ad valorem property taxation if its primary use is for religious services of that organization or for the residence of the clergyman in charge of such services.

--ANALYSIS--

Article X, Section 5 of the North Dakota Constitution provides, in part:

. . . property used exclusively for . . . religious . . . purposes shall be exempt.

Section 57-02-08(7) of the North Dakota Century Code provides that the following property is exempt from taxation:

7. All houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected, and any dwellings belonging to religious organizations intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church, together with the lots upon which the same are situated. (Emphasis supplied).

This question relates to facilities that are admittedly not used 'exclusively' for public worship or as a parsonage. Therefore, neither Article X, Section 5 of the North Dakota Constitution nor Section 57-02-08(7), N.D.C.C., can afford relief in this instance by granting a tax exemption. Lutheran Campus Council v. Board of County Commissioners, Ward County, 174 N.W.2d 362 (N.D. 1970); North Dakota Conference Association of Seventh Day Adventists v. Board of County Commissioners, Stutsman County, 234 N.W.2d 912

(N.D. 1975); Y.M.C.A. of North Dakota State University v. Board of County Commissioners, Case County, 198 N.W.2d 241 (N.D. 1972); and 84 C.J.S., Taxation, at pp. 590-594.

However, Section 57-02-08(9), N.D.C.C., provides that the following property is exempt from taxation:

9. All real property, not exceeding two acres [.81 hectares] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consists of one tract or more. All taxes assessed or levied on any such property, while the same was so used for religious purposes, are void and of no effect, and must be canceled. All personal property of any religious corporation or organization used for religious purposes is exempt from taxation.

Unlike Section 57-02-08(7), N.D.C.C., Subsection 9 has no requirement that the property in question be used 'exclusively' for the designated purposes set forth in the exemption. In such cases, it is the primary, as distinguished from the incidental, use of the property that determines whether it is exempt from taxation and each case must be decided upon its own fact. Y.M.C.A. of North Dakota State University v. Board of County Commissioners, supra; 84 C.J.S., Taxation, at pp. 449-450.

The burden of a tax exemption claimant has recently been restated by the North Dakota Supreme Court in United Power Association v. Board of County Commissioners, McLean County, 300 N.W.2d 36 (N.D. 1980), as follows:

[2, 3] With regard to the interpretation of a tax-exemption statute, this court has recognized the rule that the claimant of a tax exemption must establish the exempt status of his property and the tax-exemption statute involved will receive a strict construction against the claimant. North Dakota Soc. for Crippled Child. & Ad. v. Murphy, 94 N.W.2d 343 (N.D. 1959).

However, this court has also recognized and applied the rule that words describing the object of a tax exemption will be given a liberal and not a harsh or strained construction to obtain a reasonable result effectuating the legislative intent in providing a tax exemption. N. D. Conf. A. of 7th-D. Adv. v. B. of C. Com'rs, supra; Lutheran Camp. Coun. v. Board of Co. Com'rs, Ward Co., 174 N.W.2d 362, 363 (N. D. 1970). (300 N.W.2d 36, p. 39)

Thus, the real property located in a city would be exempt from ad valorem property taxation pursuant to the provisions of Section 57-02-08(9), N.D.C.C., if the exemption applicant made a proper factual showing that proved that the primary use of the subject

property is for religious purposes, such as for the religious services of that organization or for the residence of the clergyman in charge of such services.

--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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