

LETTER OPINION
93-L-36

February 11, 1993

Mr. Steve Ashpole
SCD Technician
Cavalier County
Soil Conservation District
901 3rd St.
Langdon, ND 58249

Dear Mr. Ashpole:

Thank you for your January 6, 1993, letter in which you ask several questions regarding a bounty for tree planting as provided for in N.D.C.C. ? 4-21-01.

N.D.C.C. ? 4-21-01 provides:

4-21-01. Bounty for tree planting -- Amount -- Deduction of taxes. A bounty must be paid out of the general fund of the county to any person who plants or has planted any kind of forest trees upon prairie land within the county, and who cultivates such trees and keeps them in a growing and thrifty condition. The bounty must be in the amount of four dollars per acre [.40 hectares] in the year in which the trees are first planted and cultivated and in the additional amount of two dollars per acre [.40 hectares] for each succeeding year, not exceeding four years, in which the trees are kept well cultivated and in a growing condition. No bounty may be paid under this section unless at least one acre [.40 hectares] has been planted to trees and may not be paid on more than ten acres [4.05 hectares], nor unless the grove is maintained upon a tract of land of not less than eighty acres [32.38 hectares] in area, nor unless there are at least four hundred living trees in a healthy and growing condition upon each acre [.40 hectares] of land for which the bounty is claimed. No bounty may be paid in any year in excess of the amount of real estate taxes levied for the year in which the bounty is claimed, upon the quarter section of land of which the parcel of land planted to trees is a part.

You first ask what is a tract of land. "Tract" or "tract of land" is not defined for the purposes of North Dakota Century Code ("N.D.C.C.") ch. 4-21. The words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears. N.D.C.C. ? 1-02-02. The words

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"tract" or "tract of land," therefore, must be construed in their ordinary sense, as no contrary intention appears from the language of the statute.

"Tract" is defined as "a continuous expanse of land or of water, mineral deposit, etc.; stretch; extent; area." Webster's New World Dictionary 2nd College Ed., 1506 (1982). This definition is consistent with the definition of "tract" provided in N.D.C.C. ? 57-02-01(14), which provides "tract" means "any contiguous quantity of land in the possession of, owned by or recorded as the property of, the same claimant, person, or company." Thus, any area of land owned by the same person is a tract.

You also question whether the bounty exists for trees planted in the past. N.D.C.C. ? 4-21-01 provides, in part:

4-21-01. Bounty for tree planting -- Amount -- Deduction of taxes. A bounty must be paid out of the general fund of the county to any person who plants or has planted any kind of forest trees upon prairie land within the county . . .

The statute is clear that anyone who plants or has planted trees is eligible for a bounty. However, N.D.C.C. ? 4-21-01 specifically limits the bounty to four years after the trees are first planted and cultivated. Therefore, it is my opinion that the bounty does exist for trees planted in the past four years, provided, of course, that the other statutory requirements are met.

Next, you ask whether the Soil Conservation District may be the assessor for examining trees. N.D.C.C. ? 4-21-04 provides:

4-21-04. Assessor to examine trees and groves -- Report made by assessors. The assessor of every township or district shall ascertain, at the time of making the assessment, whether trees have been planted by any landowner in his township or district for which compensation is claimed under this chapter. If trees have been planted for which compensation is claimed, the assessor shall examine the grove or row of trees personally and make a report of the extent and condition thereof according to the prescribed form. The report must be returned to the county auditor

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with the assessment books.

The duties of district and township assessors are set forth in N.D.C.C. chs. 57-02 and 58-09, respectively.

The soil conservation district is not the township or district assessor. A review of N.D.C.C. ch. 4-22, the statute governing soil conservation districts, reveals that soil conservation districts do not have the authority to assess trees. Therefore, it is my opinion that the Soil Conservation District may not act as the "assessor" for the examination of trees. However, the assessor may utilize the advice and counsel of the Soil Conservation District when ascertaining whether the statutory conditions have been met.

Finally, you ask if single, one-half mile windbreaks qualify for the bounty. Upon further clarification, it was learned that your question is whether the maintenance area around a windbreak can be considered as land "planted to trees" when determining whether one acre has been planted to trees.

N.D.C.C. ? 4-21-01 provides that at least one acre must be planted to trees to be eligible for the bounty. Maintenance space is land adjacent to the windbreak that is kept free from weeds and other growth for maintenance purposes. Although trees are not planted on this space, the space is needed to assure healthy trees. Therefore, in my opinion, it is reasonable to consider this maintenance space in determining the number of acres planted to trees.
Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

km/cb

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