

LETTER OPINION
98-L-27

March 23, 1998

Honorable Al Carlson
State Representative
PO Box 10014
Fargo, ND 58106

Dear Representative Carlson:

Thank you for your letter requesting an Attorney General's opinion on whether the city of Linton may grant "in lieu of taxes relief" beyond five years for the conversion of the Hogue Hotel in Linton to a low income housing project for elderly/disabled residents. You point out in your letter that the Hogue Hotel is on the Park Service Register of Historic Places and has been over 95% vacant for nearly twenty years. In your request letter you reference my September 15, 1995, opinion to Bruce Gibbens, Cando City Attorney, interpreting N.D.C.C. § 40-57.1-03.

My 1995 opinion to Cando City Attorney Bruce Gibbens (1995 N.D. Op. Att'y Gen. L-213) considered N.D.C.C. § 40-57.1-03 authorizing a city to establish payments in lieu of taxes. The sole question addressed in that opinion was whether the extension of payments in lieu of taxes for years six through twenty on a project on which initial construction was begun after June 30, 1994, was limited to projects that produced or manufactured an agricultural commodity. My opinion was that the extension of payments in lieu of taxes was not limited in that manner. Your question, however, necessitates addressing an underlying issue of whether the Hogue Hotel would be eligible for any payments in lieu of ad valorem taxes.

The only statute in N.D.C.C. ch. 40-57.1 that authorizes payment of an amount in lieu of property taxes is N.D.C.C. § 40-57.1-03 which states in pertinent part:

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project upon which initial construction is begun after June 30, 1994. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make

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payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations.

(Emphasis added.) Because the statute does not authorize payments in lieu of ad valorem taxes on buildings built prior to 1994, it is my opinion that the city of Linton would not be authorized to accept payments in lieu of taxes for this rehabilitation project of an existing building.

Matt Schneider, president of the Linton City Council, sent a letter to Rick Clayburgh, State Tax Commissioner, dated February 11, 1998, asking whether the city of Linton council could grant any ad valorem tax exemption beyond five years for the renovation of the Hogue Hotel. Although the question presented is different, because the issues are related I have enclosed for your information a copy of Mr. Schneider's letter and the response from Robert W. Wirtz, chief counsel, Office of State Tax Commissioner, dated February 24, 1998.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

bab/pg
Enclosure