

**LETTER OPINION**  
**98-L-131**

September 2, 1998

Mr. Garylle B. Stewart  
Fargo City Attorney  
PO Box 1897  
Fargo, ND 58107-1897

Dear Mr. Stewart:

Thank you for your letter relating to property tax exemptions for new and expanding businesses under N.D.C.C. ch. 40-57.1. Specifically, you note that N.D.C.C. § 40-57.1-04.3 authorizes a property tax exemption for speculative buildings and properties constructed and owned by a local development organization. Your question is whether a five-year tax exemption or a payment in lieu of taxes agreement is available for a speculative building that is owned by a private developer.

The provisions of N.D.C.C. § 40-57.1-04.3 apply only to buildings and other properties constructed and owned by a local development organization. The provisions of N.D.C.C. § 40-57.1-03 authorize a municipality to grant an ad valorem tax exemption for a qualifying project or enter into a payment in lieu of taxes agreement with a qualifying project operator.

A qualifying project is defined, in relevant part, by N.D.C.C. § 40-57.1-02(4) for use under the provisions of N.D.C.C. § 40-57.1-03:

"Project" means any revenue-producing enterprise, or any combination of two or more of these enterprises.

It is a question of fact to be determined by the municipality whether a speculative building that is owned by a private developer is a "revenue-producing enterprise." If it is determined that it is a qualifying project, then the municipality may grant an ad valorem tax exemption or enter into a payment in lieu of taxes agreement with a private developer. If such an exemption or agreement was provided by a municipality, it would terminate at the time ownership of the subject property was transferred to another qualifying project operator. N.D.C.C. § 40-57.1-06. The successor would then be eligible to apply for the exemption provisions authorized under N.D.C.C. § 40-57.1-04.1. Id.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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