

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-08

Date issued: June 7, 1999

Requested by: Stephen J. Rice, Walsh County State's Attorney

- QUESTION PRESENTED -

Whether land enrolled in the Federal Conservation Reserve Program (CRP) qualifies to be subclassified as inundated agricultural land for ad valorem taxation purposes.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that land enrolled in the CRP qualifies to be subclassified as inundated agricultural land for ad valorem taxation purposes.

- ANALYSIS -

N.D.C.C. § 57-02-01(1) defines "agricultural property" as a separate class of property for ad valorem taxation purposes. N.D.C.C. § 57-02-27.2 provides the method for the valuation and assessment of agricultural lands defined as agricultural property. Senate Bill 2052, as enacted by the 1999 Legislative Assembly, amended N.D.C.C. § 57-02-27.2 by creating a subclassification of agricultural property for inundated agricultural land for the purpose of subjecting it to a separate method for valuation and assessment. Senate Bill 2052 created and enacted a new subsection 6 to N.D.C.C. § 57-02-27.2, which provides as follows:

For purposes of this section, "inundated agricultural land" means property classified as agricultural property which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for a full growing season or more. Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands for purposes of this section must be determined by the agricultural economics department of North Dakota state university to be ten percent of the average agricultural value of noncropland for the county as determined under this section. Valuation of individual parcels of

inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.

(Emphasis added.) The question presented relates solely to the meaning of the term "inundated" appearing in subsection 6 of Senate Bill 2052.

Generally, words used in a statute are to be understood in their ordinary sense. N.D.C.C. § 1-02-02; Northern X-Ray Co. v. State, 542 N.W.2d 733, 735 (N.D. 1996). The word "inundate" has a very limited meaning. The word "inundate" is defined as "to flood with water, submerge" or "to flood as if with water." Webster's Third New International Dictionary of the English Language Unabridged, p. 1188 (1971). The Supreme Court has further articulated the statutory interpretation rules:

The interpretation of a statute is a question of law and is fully reviewable by this court. Our primary goal in construing a statute is to discover the intent of the legislature. We look first to the language of the statute in seeking to find legislative intent. If a statute's language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute. If a statute's language is ambiguous, however, we may look to "extrinsic aids" in interpreting the statute.

Northern X-Ray Co., 542 N.W.2d at 735; Kinney Shoe Corp. v. State, 552 N.W.2d 788, 790 (N.D. 1996).

In my opinion, it is clear and unambiguous that the only requirement for agricultural land to qualify as "inundated agricultural land" is that it is inundated (flooded) . . . "to an extent making it unsuitable for growing crops or grazing farm animals for a full growing season or more." The fact that qualifying land is also enrolled in the CRP is irrelevant for ad valorem taxation purposes.

However, if it is assumed for argument's sake that this language is ambiguous, one of the "extrinsic aids" that may be considered is the legislative history of the statute. N.D.C.C. § 1-02-39(3); Northern X-Ray Co., 552 N.W.2d at 736. A review of the legislative history of Senate Bill 2052 reveals that it has its genesis in the 1997-1999 Interim Taxation Committee of the Legislative Council. The Committee agreed that legislation was needed to address the issue of ad valorem taxation of flooded agricultural lands by amending the valuation formula. The main focus of this concern was the severe flooding in the Devils Lake area. Minutes of the Taxation Committee: July 22, 1997; September 30, 1997; December 16, 1997; March 11-12, 1998; July 7, 1998; and September 3, 1998.

The Interim Taxation Committee's original draft legislation used the word "unproductive" throughout the bill draft instead of the word "inundated." The original draft legislation was amended to replace the word "unproductive" with the word "inundated." Minutes of the Taxation Committee: July 7, 1998, and September 3, 1998. Senate Bill 2052 was introduced in the 1999 Legislative Assembly as amended.

On January 6, 1999, the Senate Finance and Taxation Committee heard testimony on Senate Bill 2052. The testimony expressed concern that, since flooded lands were removed from the assessment of agricultural lands, legislation was needed to remove the productivity loss from the valuation formula. All the minutes of the Interim Taxation Committee were presented to the Senate Finance and Taxation Committee. The House Finance and Taxation Committee heard a similar presentation on February 24, 1999. A review of this legislative history gives no indication that the Legislative Assembly intended to exclude CRP acres from qualifying as inundated agricultural land.

Finally, "when the [Tax] Commissioner interprets a statute on a complex and technical subject, the [Tax] Commissioner's interpretation is entitled to appreciable deference if it does not contradict the language of the statute, or if it is not arbitrary and unjust." Kinney Shoe Corp., 552 N.W.2d 788, 790. Because the Tax Commissioner is charged with general supervision over all assessors of general property, this appreciable deference is given to property tax guidelines issued by the Office of State Tax Commissioner. Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712, 720 (N.D. 1984).

On April 15, 1999, the Office of the Tax Commissioner issued written guidelines to all County Directors of Tax Equalization regarding the enactment of Senate Bill 2052.

Several questions have been presented to the Tax Department, since the passage of SB 2052, asking which lands may qualify as inundated lands. The statute provides the following requirements that land must meet in order to qualify as inundated land: (1) land must be classified as agricultural, (2) land must be inundated (covered with water) (3) the extent of inundation (flooding) must have prevented the growing of crops or grazing by farm animals for at least one full growing season. The statute does not establish any other restrictions or limitations.

The Office of State Tax Commissioner has reviewed these questions and developed some guidelines. The following land may qualify as inundated land because the statute does not limit, prevent or

exclude lands from qualifying as inundated land if it participates in a government program:

- inundated CRP acres.

Memorandum from Barry Hasti and Charles Krueger to County Directors of Tax Equalization (April 15, 1999) (emphasis added). This interpretation by the Tax Commissioner's Office is entitled to appreciable deference because it does not contradict the language of the statute. Therefore, it is my opinion that land enrolled in the CRP qualifies to be subclassified as inundated agricultural land for ad valorem taxation purposes.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
Attorney General

Assisted by: Robert W. Wirtz
Special Assistant Attorney General