

**LETTER OPINION
2002-L-31**

May 24, 2002

Mr. Nicholas B. Hall
Grafton City Attorney
PO Box 578
Grafton, ND 58237-0578

Dear Mr. Hall:

Thank you for your inquiry regarding the property tax exemption for farm structures and improvements located on agricultural lands. You state in your letter that there are several properties in the city of Grafton that were former railroad lease sites which are now privately owned by farmers or farm groups and have potato warehouses located upon them. You express concern that a literal reading of the statutory definition of agricultural property creates inequities in the application of the exemption and would like to know whether any administrative discretion may be used when applying these exemption provisions.

Section 57-02-08(15), N.D.C.C., creating the property tax exemption for farm structures and improvements, provides, in pertinent part, as follows:

- a. All farm structures and improvements located on agricultural lands.
 - (1) This subsection must be construed to exempt farm buildings and improvements only, and may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
 - (2) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than

farming” includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.

In 1979, the North Dakota Supreme Court recognized that there was an administratively created de facto classification for property taxation purposes. The Supreme Court recognized that classification must be done under legislative authority and held that it would not “. . . countenance de facto classification of property in North Dakota for purposes of taxation.” Soo Line R. Co. v. State, 286 N.W.2d 459, 465 (N.D. 1979).

Responding to this decision, the 1981 Legislative Assembly created five classes of property for the purpose of property taxation: (1) “agricultural property”; (2) “residential property”; (3) “centrally assessed property”; (4) “railroad property”; and (5) “commercial property.” 1981 N.D. Sess. Laws ch. 564, § 5. Section 57-02-01(1), N.D.C.C., defines “agricultural property” and provides in pertinent part:

“Agricultural property” means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any four of the following conditions exist:

. . . .

In your letter, you state that there are approximately twenty warehouses or other farm related structures which are fully taxed because they are structures located on platted property within the city of Grafton. There are five potato warehouse structures which have benefited from exemptions for several years, primarily because they are located upon unplatted city property. Presumably this occurred when the assessing officials applied the facts to the relevant provisions of N.D.C.C. §§ 57-02-01(1) and 57-02-08(15) even though “the five structures in the City of Grafton are on property which has been assessed as commercial continuously and prior to March 30, 1981.” City officials believe the apparent disparate treatment of these warehouses creates inequities and would like to know the limits of their discretion when applying the provisions of these statutes.

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“[C]ities are creatures of statute and all power and authority must be derived from the legislature.” Bigwood v. City of Wahpeton, 565 N.W.2d 498, 501 (N.D. 1997). As previously stated, the North Dakota Supreme Court in Soo Line, supra, held that the classification of property for taxation purposes is the prerogative of the Legislative Assembly.

A review of the above-quoted statutory provisions reveals that a structure qualifies for the farm structure exemption only if it is located on agricultural lands. N.D.C.C. § 57-02-08(15)(a). The term “agricultural property” applies to lands used for raising agricultural crops or grazing farm animals. N.D.C.C. § 57-02-01(1). It is my opinion that if a structure is located on unplatted land in a city that is not used for raising crops or grazing farm animals, and the land is properly assessed as commercial property, the structure does not qualify for the agricultural exemption under N.D.C.C. § 57-02-08(15).

If it is determined that these warehouses should be subject to property taxation, it would become the burden of the property owner to establish the exempt status of the property. North Dakota Soc. for Crippled Children & Adults v. Murphy, 94 N.W.2d 343 (N.D. 1959).

To the extent that this opinion conflicts with the July 25, 1990, letter opinion to Douglas Manbeck, Nelson County State’s Attorney, the Manbeck opinion is overruled.

Sincerely,

Wayne Stenehjem
Attorney General

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