

**LETTER OPINION
2002-L-70**

December 4, 2002

Mr. James W. Wold
Griggs County State's Attorney
PO Box 541
Cooperstown, ND 58425-0541

Dear Mr. Wold:

Thank you for your inquiry regarding the property tax exemption for a grain elevator located on unplatted railroad land. You state in your letter that there is a grain elevator located in the city of Binford, which is owned by a farmer who uses it for storage as part of a farm operation. The elevator is located on land owned by a railroad and leased to the farmer. The tracks have been removed, so the land is no longer being used to operate a railroad. You indicate there is no record the land was ever surveyed and platted. You ask whether the railroad land can be reclassified as agricultural land and whether the elevator qualifies as an exempt farm structure or improvement under N.D.C.C. § 57-02-08(15).

With regard to your first question, N.D.C.C. § 57-02-01(5)(11) provides that non-operating property owned by a railroad must be assessed as "commercial property" unless it meets the requirements of another category of property, such as "agricultural property." Property can be categorized as "agricultural property" only if it is "used for raising agricultural crops or grazing farm animals." N.D.C.C. § 57-02-01(1).¹ See also 2002 N.D. Op. Att'y Gen. L-31 ("Agricultural property" is land used to raise agricultural crops or graze farm animals.) The use of a structure to store grain does not convert the land upon which the structure is located into agricultural land. You state that the grain elevator is owned by a farmer who uses it as part of his farm operation for grain storage. However, if the real property on which the grain elevator is situated is not used for either "raising agricultural crops" or "grazing farm animals," it is my opinion that the real property cannot be reclassified as "agricultural property."

¹ It is my opinion that "agricultural lands," as that phrase is used in N.D.C.C. § 57-02-08(15)(a) is the same as "agricultural property," defined in N.D.C.C. § 57-02-01(1).

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Your second question asks how the elevator structure should be assessed. The conclusion reached in 2002 N.D. Op. Att'y Gen. L-31 issued to Grafton City Attorney Nicholas B. Hall (copy enclosed) responds directly to your question. That case involved potato warehouses in the city of Grafton located on several former railroad lease sites. The warehouses were purchased by farmers or farm groups for storage in connection with farming operations. In that opinion, I stated:

[A] structure qualifies for the farm structure exemption only if it is located on agricultural lands. . . . 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, . . . the structure does not qualify for the agricultural exemption under N.D.C.C. § 57-02-08(15).

Therefore, it is my opinion that because the elevator is situated on commercial property, it should also be classified as commercial property.

Finally, you asked what part of the July 25, 1990, Attorney General's opinion to Douglas Manbeck was overruled by 2002 N.D. Op. Att'y Gen. L-31. The opinion to Mr. Manbeck concluded that land used for storing grain was agricultural land. The 2002 opinion overruled that by concluding it is not the use of the structure that determines whether land is "agricultural property." The land itself must be used for raising crops or grazing farm animals. 2002 N.D. Op. Att'y Gen. L-31. Consequently, the use of the structure to store grain does not convert land upon which the structure is located into agricultural land.

Sincerely,

Wayne Stenehjem
Attorney General

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Enclosure