

**LETTER OPINION
2004-L-15**

February 12, 2004

Mr. Michel W. Stefonowicz
Crosby City Attorney
PO Box 67
Crosby, ND 58730-0067

Dear Mr. Stefonowicz:

Thank you for your letter asking who has the authority to decide whether an ad valorem tax exemption granted to a new industry under N.D.C.C. ch. 40-57.1 remains in effect. You stated the city of Crosby granted a five-year property tax exemption for a qualifying project under N.D.C.C. § 40-57.1-03. It is my understanding that the county director of tax equalization (county director) asserted the property no longer qualifies for the exemption after making the factual determination that it is not being used for the purpose stated in the application for the exemption. Since the city of Crosby granted the exemption, you ask whether the city, rather than the county director, should determine whether the property continues to qualify for the exemption.

The governing body of a city may grant a partial or complete exemption from ad valorem taxation on structures and improvements used in or necessary to the operation of a qualifying project for up to five years. N.D.C.C. § 40-57.1-03. This exemption may be extended from the sixth year through the tenth year if the project produces or manufactures a product from agricultural commodities. *Id.* Section 40-57.1-06, N.D.C.C., provides, in pertinent part, that “a property tax exemption . . . provided by this chapter . . . is valid only while the property is used for the purposes stated in the application.” Neither the relevant statutory language nor an examination of the legislative history gives specific direction as to who should make this factual determination. 1975 N.D. Sess. Laws, ch. 387, § 5.

In 1990, this office concluded that the Tax Commissioner’s Office has statutory authority to issue guidelines related to the ad valorem taxation of property, including guidelines specifically directed to exemptions granted under N.D.C.C. ch. 40-57.1. N.D.A.G. Letter to Quast (Mar. 14, 1990). The North Dakota Supreme Court gives weight to property tax guidelines issued by the Tax Commissioner’s Office that give practical construction to an ambiguous statute. Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712, 720 (N.D. 1984).

In July of 1999, the Tax Commissioner's Office issued property tax guidelines entitled Property Tax Incentives for New or Expanding Businesses related to N.D.C.C. ch. 40-57.1. Paragraph 26 of the guidelines states:

The municipality certifies the tax incentives granted by submitting a copy of the project operator's application with the attachments to the State Tax Commissioner and county director of tax equalization. The county director of tax equalization advises the local assessor when the property is taxable or exempt.

(Emphasis supplied).

In the 1990 opinion, this office further concluded a city may grant a new business tax exemption only if it is authorized under N.D.C.C. ch. 40-57.1 and "a county has the authority to initiate a proceeding to correct an assessment if an exemption was improperly granted." N.D.A.G. Letter to Quast (Mar. 14, 1990). A county director of tax equalization serves at the pleasure of the board of county commissioners and is charged with the duties of the general administration of local ad valorem taxation. N.D.C.C. §§ 11-10.1-01(3), 11-10.1-05 and 11-10.1-06. The above-quoted guideline of the Tax Commissioner's Office, specifying that it is the county director who advises when property is exempt, is consistent with these statutory provisions giving the county authority to challenge an exemption and the county director general administrative duties over local ad valorem taxation.

Therefore, it is my opinion that a county director of tax equalization has the authority to make the factual determination whether a property continues to be used for the purposes stated in the application for exemption that was approved by a city under N.D.C.C. § 40-57.1-03.

Sincerely,

Wayne Stenehjem
Attorney General