

**LETTER OPINION
2004-L-32**

May 3, 2004

Mr. Gary D. Neuharth
Dickey County State's Attorney
PO Box 346
Oakes, ND 58474-0346

Dear Mr. Neuharth:

Thank you for your letter asking about the ad valorem tax exemption for a farm residence under N.D.C.C. § 57-02-08(15). Specifically, you state that many Dickey County farmers have incorporated their farming operations and you ask whether this corporate status disqualifies their respective residences from enjoying the ad valorem exemption for a farm residence. For the reasons stated below, it is my opinion that incorporating a farm operation by itself does not disqualify a residence from the ad valorem tax exemption under N.D.C.C. § 57-02-08(15).

ANALYSIS

This issue was addressed by the North Dakota Supreme Court in Butts Feed Lots, Inc. v. Board of Cty. Commissioners, 261 N.W.2d 667, 669 (N.D. 1977):

As a preliminary matter, and in reply to the contentions of the Commissioners, the fact that Butts is a corporation which claims an exemption for farm buildings or structures is not determinative of the issues of this case. Nothing in § 57-02-08(15), NDCC, indicates that ownership of the particular buildings or structures is determinative of the exemption. Particularly in reference to the house, there is no requirement that the owner live in an exempt farm home.

Although N.D.C.C. §57-02-08(15) has been amended several times since the Butts decision, there is still no requirement that the owner (other than a retired farmer) live in

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an exempt farm home.¹ In order to obtain the exemption, however, the residence must be used or occupied by a farmer. N.D.C.C. § 57-02-08(15)(b).

Therefore, it is my opinion that since there is no requirement that the owner live in an exempt farm home, incorporating a farming operation by itself does not disqualify a residence from the ad valorem tax exemption under N.D.C.C. § 57-02-08(15).

Sincerely,

Wayne Stenehjem
Attorney General

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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. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

¹ Whether the corporate or limited liability company farming law, N.D.C.C. ch. 10-06.1, has been violated in a particular case is a separate issue to be investigated on its own. Butts Feed Lots, 261 N.W.2d at 669-70.