

N.D.A.G. Letter to Gibbens (Sep. 26, 1989)

September 26, 1989

Ms. Lisa Beckstrom Gibbens
Towner County State's Attorney
P.O. Box 601
Cando, ND 58324

Dear Ms. Gibbens:

Thank you for your August 2, 1989, letter in which you ask whether Attorney General's Opinion 89-6 provides for the taxation of a lessee's possessory interest in state land used for grazing or pasture.

Your concern arises because of N.D.C.C. § 57-02-26(1), which provides:

1. Property held under a lease for a term of years . . . belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture and grazing purposes . . . must be considered, for all purposes of taxation, as the property of the person so holding the same.

N.D.C.C. § 57-02-26(1).

While Attorney General's Opinion 89-6 reaches the general conclusion that leasehold interests in state land are taxable, the opinion does not address specific interests such as leasehold interests in pasture or grazing land. The opinion states: "No enabling legislation is necessary [to tax a possessory interest in state land] because an assessment of this kind would be made in the same manner as any other assessment against a nonexempt person having a possessory interest in government-owned land." N.D.C.C. § 57-02-26(1) specifically exempts leaseholds of pasture or grazing land from this method of assessment.

This conclusion is supported by circumstances which occurred during the 51st Legislative Assembly. During the session House Bill No. 1075 was introduced. This bill provided for payments to political subdivisions of in lieu taxes for land acquired by the Land Department through Bank of North Dakota foreclosures. Governor Sinner and I supported a proposed amendment to this bill that would have deleted the phrase "for pasture or grazing purposes" from N.D.C.C. § 57-02-26(1). In testimony before a Senate committee I stated the purpose of the proposed amendment was to subject a significant amount of state land that is presently tax exempt to taxation, that is, pasture or grazing land. Hearing on H. 1075 Before the Senate Political Subdivisions Comm., 51st Leg. (March 17, 1989) (Testimony of N. Spaeth). Although the amendment was accepted by the committee, it was rejected by the Senate. House Bill No. 1075 became law without the amendment.

See 1989 N.D. Sess. Laws ch. 696. These circumstances are an indication of the Senate's intent to preserve the status quo and continue the nontaxability of a lessee's possessory interest in state grazing or pasture land.

This position is also consistent with the State Land Department's long-standing position that these interests have never been taxed. The fact such interests traditionally have not been taxed also supports the conclusion that they are nontaxable.

In a 1920 decision, the Nebraska Supreme Court was asked to decide the taxability of insurance proceeds, an interest that had never before been taxed. The court stated: "[T]he contemporaneous construction of the statute by the officers, who have been called upon to carry it into effect, which has obtained and has never been questioned, is entitled to great respect" In re Laub, 177 N.W. 749 (Neb. 1920). A lessee's possessory interest in state grazing or pasture land has not been taxed in the past. The reasoning in Laub supports a conclusion the interest is not a taxable interest.

Based on the long-standing interpretation of our tax laws and the fact the Senate rejected a proposal designed to tax leasehold interests in state grazing or pasture land, I conclude that such interests are not taxable.

Sincerely,

Nicholas J. Spaeth

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