

Office of the Attorney General  
State of North Dakota

Opinion No. 81-114

Date Issued: October 22, 1981

Requested by: Representative Alvin Hausauer, Chairman  
Finance and Taxation Committee of Legislative Council

--QUESTIONS PRESENTED--

I.

Whether a city can vacate a plat retroactive to January 1, 1981, to change the assessment classification of that property for the 1981 tax year to 'agricultural property' as defined in Section 57-02-01(11) of the North Dakota Century Code.

II.

Whether the provisions of 1981 N.D. Sess. Laws, Ch. 564, which provide that agricultural property shall not include platted lands, supersede and prevail over the provisions of Sections 40-51.2-06, 40-51.2-07, and 40-51.2-16, N.D.C.C., which provide that agricultural lands annexed by a city shall be classified as agricultural lands for tax purposes until put to another use.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a city cannot vacate a plat retroactive to January 1, 1981, to change the assessment classification of that property for the 1981 tax year to 'agricultural property' as defined in Section 57-02-01(11), N.D.C.C.

II.

It is my further opinion that those provisions of 1981 N.D. Sess. Laws, Ch. 564, which provide that agricultural property shall not include platted lands do supersede and prevail over the provisions in Sections 40-51.2-06, 40-51.2-07, and 40-51.2-16, N.D.C.C., which provide that agricultural lands annexed by a city shall be classified as agricultural lands for tax purposes until put to another use.

--ANALYSIS--

I.

When a plat or part of a plat in a city is vacated, it is not vacated by the city itself, unless perhaps if the city is the sole proprietor, but is either vacated by the proprietors of the plat or part thereof to be vacated by the district court upon application made to it by the proprietors, as provided in certain sections of the Century Code.

Section 40-50-20, N.D.C.C., provides that before the sale of lots therein, a plat or part of a plat of land in a city may be vacated by the proprietors by a written instrument declaring the plat or part thereof to be vacated and by executing and recording the instrument as provided in that section.

Sections 40-50-21, 40-50-22, and 40-50-23, N.D.C.C., provide a procedure for notice and hearing in district court on an application by proprietors of a townsite or any part thereof to vacate the townsite or part thereof.

Section 40-50-24, N.D.C.C., provides as follows:

40-50-24. PART OF A PLAT MAY BE VACATED. Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter if the vacating does not abridge or destroy any of the rights and privileges of other proprietors in the plat. This chapter shall not authorize the closing or obstructing of any public highways laid out according to law.

It is noted that the term 'rights and privileges' as used in Section 40-50-24, N.D.C.C., may include rights and privileges acquired by a city in a plat that it presumably would not want destroyed by vacation of all or part of the plat, at least not without its express consent. See *City of LaMoure v. LaSell*, 145 N.W. 577, 582 (N.D. 1914). Also see such cases as *City of Jamestown v. Miemietz*, 95 N.W.2d 897, 902 (N.D. 1959), and *Hille v. Nill*, 226 N.W. 635 (N.D. 1929).

If a plat or part of a plat is vacated as provided in Section 40-50-20, N.D.C.C., or by the district court as provided in Sections 40-50-21, 40-50-22, and 40-50-23, N.D.C.C., at any time after February 1, 1981, that would not provide a basis for changing the 1981 assessment classification of the vacated lots to 'agricultural property' as defined in Section 57-02-02(11), N.D.C.C., or for purposes of valuation and assessment as agricultural lands as provided in Section 57-02-27.2, N.D.C.C.

The provisions of Sections 57-02-01(11) and 57-02-27.2, N.D.C.C., were enacted by the 1981 Legislative Assembly and, as provided in 1981 N.D. Sess. Laws, Ch. 564, § 11, became effective for assessments of property on or after January 1, 1981. Section 57-02-11(1), N.D.C.C., provides for the listing and assessment of real property annually 'with reference to its value' on February first of the assessment year. This requirement that it be assessed with reference to its value on February first of the assessment year means that its taxable or exempt status and its value are determined with respect to the facts existing

on the February first assessment date. See *United Telephone Mutual Aid Corporation v. State*, 87 N.W.2d 54 (N.D. 1957).

Changes made in the ownership, use, or other status of taxable property after the February first assessment date do not provide a basis for changing the assessment that was made that year in reference to the value and taxable status of the property on February first unless there is a statute that expressly provides for changing that assessment. There does not appear to be any statute which authorizes changing the classification of platted lands in a city to the agricultural property classification provided in Sections 57-02-01(11) and 57-02-27.2, N.D.C.C., if the plat or a part thereof is vacated after the February first assessment date. Any such change could not become effective for assessment purposes until the following year.

Accordingly, if a plat or a portion thereof is vacated after February 1, 1981, the 1981 assessment on the part of the plat vacated cannot be changed.

## II.

Sections 40-51.2-06, 40-51.2-07, and 40-51.2-16, N.D.C.C., were amended by 1978 N.D. Sess. Laws, Ch. 337, to provide that a municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use. That 1973 law also amended Section 57-02-27, N.D.C.C., by adding to the end of the section the two following sentences:

Agricultural lands within the corporate limits of a city, whether or not platted, shall constitute agricultural property and be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Such valuation shall be uniform with the assessed value of adjoining unannexed agricultural land.

Section 57-02-27, N.D.C.C., as amended in 1981, reads, in part, as follows:

Agricultural lands within the corporate limits of a city which are not platted shall constitute agricultural property and be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Such valuation shall be uniform with the valuation of adjoining unannexed agricultural land.

Thus, this 1981 amendment of Section 57-02-27, N.D.C.C., provided in effect that, as to lands in a city, only unplatted agricultural lands in the city can be regarded as agricultural property. This is consistent with the following definition of 'agricultural property' found in Section 57-02-01(11), N.D.C.C.:

'Agricultural property' means lands which are used for raising agricultural crops or grazing farm animals but shall not include platted lands.

These 1981 amendments adding the definition of agricultural property to Section 57-02-01, N.D.C.C., and amending the last two sentences of Section 57-02-27, N.D.C.C., place those provisions in irreconcilable conflict with the 1973 amendments to Sections 40-51.2-06, 40-51.2-07, and 40-51.2-16, N.D.C.C., insofar as classification on platted lands in cities for tax purposes is concerned. Because the 1981 amendments were enacted later, they are controlling and supersede and prevail over any conflicting provisions in Sections 40-51.2-06, 40-51.2-07, and 40-51.2-16, N.D.C.C. See *First State Bank of Cooperstown v. Ihringer*, 217 N.W.2d 857, 864 (N.D. 1974).

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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