

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 88-24

Date issued: October 3, 1988
Requested by: Kent L. Johnson, New Town City Attorney

- QUESTION PRESENTED -

Whether a Native American tribal member living on the reservation in rental property owned by a state public school district or other governmental entity is subject to a local ad valorem tax assessment on the possessory interest in that rental property.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a Native American tribal member living on the reservation in rental property owned by a state public school district or other government entity is not subject to a local ad valorem tax assessment on the possessory interest in that rental property.

- ANALYSIS -

"A possessory interest in government owned real property held by a nonexempt person is . . . subject to taxation on the value of the possessory interest, regardless of the characterization of the lease under which it is held because no exemption is provided by law." N.D. Op. Att'y Gen. 88-7 at 2. This applies to property owned by a state public school district.

Further, this taxable interest is collectable as a personal charge against the nonexempt holder of the possessory interest. 1981 N.D. Op. Att'y Gen. 351.

The only issue is whether a Native American tribal member living on the reservation in rental property owned by a government entity is a person who is a tax-exempt holder of the possessory interest.

Under the facts described in the question presented in this opinion, the possessory interest property right of a Native American cannot be subject to a local ad valorem tax assessment without congressional consent. McClanahan v. Arizona State Tax Comm., 411 U.S. 164 (1973); Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973); Moe v. Salish & Kootenai Tribes, etc., 425 U.S. 463 (1976); Bryan v. Itasca Cty., Minnesota, 426 U.S. 373 (1976); White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980).

In McClanahan, the United States Supreme Court summarized principles of state taxation of Indians on reservations. Citing a treatise on federal Indian law,

the Court stated:

State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply. It follows that Indians and Indian property on an Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress.

411 U. S. at 171.

There is no congressional act or federal court decision which would authorize a local ad valorem tax assessment of the possessory interest of a Native American tribal member living on the reservation in rental property owned by a state public school district or other governmental entity. Under these circumstances, a Native American is a tax-exempt holder of a possessory interest.

- EFFECT -

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.

Nicholas J. Spaeth
Attorney General

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