

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-4

Date issued: March 22, 1989

Requested by: Representative Alice Olson, Chairperson  
Natural Resources Committee  
North Dakota House of Representatives

- QUESTION PRESENTED -

Whether an annual property tax of a fixed amount per acre on severed mineral interests would violate the requirement of class uniformity under N.D. Const. art. X, ' 5.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an annual property tax of a fixed amount per acre on severed mineral interests would not violate the requirement of class uniformity under N.D. Const. art. X, ' 5.

- ANALYSIS -

N.D. Const. art. X, ' 5, mandates that "[t]axes shall be uniform upon the same class of property."

In 1928 the North Dakota Supreme Court found that an annual property tax of three cents per acre on severed mineral interests violated the uniformity provisions of the state constitution. Northwestern Improvement Co. v. State, 220 N.W. 436 (N.D. 1928). The North Dakota Supreme Court later found that a similar tax enacted by the 1947 Legislative Assembly also violated the uniformity provisions of the state constitution. Northwestern Improvement Co. v. Morton County, 47 N.W.2d 543 (N.D. 1951).

In that case the court also recognized that the uniformity requirement of the state constitution is substantially the same as that required by the equal protection clause of the fourteenth amendment of the United States Constitution. Id.

The United States Supreme Court has clearly articulated that federal standard in a case decided after the two North Dakota Supreme Court decisions. In

Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359 (1973), the Court wrote:

The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination. Harper v. Virginia Board of Elections, 383 U.S. 663, 666, 86 S.Ct. 1079, 1081, 16 L. Ed.2d 169. Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.

Following this federal standard exclusively, the North Dakota Supreme Court has upheld, under the uniformity provisions of the state constitution, the validity of a property tax law which defined as real property subject to taxation machinery and equipment used in refining oil and gas, notwithstanding the fact that machinery and equipment of the processors of raw materials were generally exempt personal property under N. D. C. C. ' 57-02-08(25). Signal Oil Co. v. Williams County, 206 N.W.2d 75, 81 (N.D. 1973). See also Souris River Mutual Aid Corp. v. State, 162 N.W.2d 685 (N.D. 1968).

It appears, therefore, that the North Dakota Supreme Court considering a property tax on severed mineral interests now would follow the Lehnhausen analysis, rather than the two old North Dakota cases, and would uphold the tax.

It should also be noted that "[e]very legislative enactment is presumed to be valid, and will be upheld unless it is clearly shown that the statute contravenes the State or Federal Constitution." Mund v. Rambough, 432 N.W.2d 50, 55 (N.D. 1988).

Based upon this presumption and the present understanding of the broad powers of the Legislative Assembly to classify property under N.D. Const. art. X, ' 5, it is my opinion that an annual property tax of a fixed amount per acre on severed mineral interests would not violate the uniformity provisions of the state constitution.

- 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.

ATTORNEY GENERAL' S OPINION 89- 4  
March 22, 1989  
Page 3

Nicholas J. Spaeth  
Attorney General

Assisted by: Robert W. Wirtz  
Assistant Attorney General

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