OPINION
44-111

June 13, 1944 (OPINION)

TAXATION

RE: State owned property

Your letter of June 7 addressed to the Attorney General, relative to the above-entitled matter, has been received and same has had our consideration.

Section 176 of the Constitution, as amended, provides specifically that "The property of the United States and of the state, county, and municipal corporations and property used exclusively for schools, religious, cemetery, charitable, or other public purposes shall be exempt from taxation." Chapters 191 and 193 of the Session Laws of 1933 provide specifically that "it was the intention of the Legislature, and it is the intention of this Legislature, that all acts of the Industrial Commission shall be the acts of the state of North Dakota, functioning in its sovereign capacity, and no court shall ever construe this section otherwise." (Chapter 191 - 1933)

Chapter 193 of the same session provides that "In the creation of the North Dakota Mill and Elevator Association, it was the intention of the Legislature, and it is the intention of this Legislature, that all acts of the association shall be the acts of the state of North Dakota, functioning in its sovereign and governmental capacity and no court shall ever construe this section otherwise. The Mill and Elevator Association is not a separate agency of the sovereign power, but is the state itself functioning."

There is no ambiguity in the language employed in the statutes to which I have referred. It follows that any property acquired by the Mill and Elevator Association, functioning as such, is property of the state and, therefor, is not subject to taxation.

In the case of Bismarck Lumber Company vs. the Federal Land Bank, which the undersigned argued in the Supreme Court of the United States, I took the position that the Federal Land Bank, in purchasing lumber for its farms, was subject to the sales tax since it was in fact engaging in private business and in competition with private business. That August Body, however, held that no activity of federal government was subject to taxation by a state unless it was specifically made subject to taxation by acts of congress. It held further that even though the Federal Land Bank did engage in private business, it nevertheless was an instrumentality of the federal government, and that any activity by the federal government was an activity engaged in, in its sovereign capacity.

Reasoning by the same token, it would logically follow that is the federal government cannot be taxed without specific congressional authorization, even though it does engage in private business, the same rule would apply to a state acting under specific statutes in

its sovereign capacity, especially since taxation of state-owned property is prohibited by section 176 of the State Constitution.

ALVIN C. STRUTZ
Attorney General