LETTER OPINION
2003-L-16

March 13, 2003

Mr. Nevin Van de Streek
Minot City Attorney
PO Box 1697
Minot, ND 58702-1697

Dear Mr. Van de Streek:

Thank you for your letter requesting my opinion on whether a particular parcel of real estate and its improvements located in Minot are exempt from ad valorem taxation. Although you enclosed extensive materials with your request, the salient facts were articulated in your letter. You indicated a multi-family housing project was constructed in Minot to be exclusively dedicated to tenancy by low-income renters at below-market rental rates. You stated that an entity named Neighborhood Development Enterprises Inc., a § 501(c)(3) non-profit corporation which was previously formed by the Minot Housing Agency, is a general partner in a limited partnership which owns the project. Under the partnership agreement the non-profit corporation owns 99% of the general partnership interest in the limited partnership. In addition, it has the right under the partnership agreement after fifteen years to purchase the project under a formula set out in the agreement.

Your letter and the enclosures focus, to a certain extent, on the ownership of this housing project by a limited partnership, the role of the nonprofit corporation as a co-general partner in that limited partnership, and the effect this form of ownership has on the question of whether the project is exempt from ad valorem taxation. The ownership issue adds, as you noted, considerable complexity to the question of the property tax exemption. However, as explained below, it is not necessary to reach that issue because the North Dakota Constitution provides a complete property tax

exemption[1] if the property is being used exclusively for charitable[2] or other public purposes.[3]

Article X, section 5 of the North Dakota Constitution addresses the issue of the taxable status of property used for charitable or other public purposes:

> [P]roperty used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.

(Emphasis supplied.)

Section 57-02-08(8), N.D.C.C., also addresses the issue of the taxable status of property used for charitable purposes:

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[1] Property that may not be exempt from taxation under statutory exemptions may be exempt under article X, section 5 of the North Dakota Constitution. See N.D.A.G. 95-F-05.

[2] Black's Law Dictionary 234 (6th ed. 1990) defines the term "charitable purpose" as follows:

> Term as used for purpose of tax exemption has as its common element the accomplishment of objectives which are beneficial to community or area, and usually recognized charitable purposes, not otherwise limited by statute, are generally classified as: relief of poverty; advancement of education; advancement of religion; protection of health; governmental or municipal purposes; and other varied purposes the accomplishment of which is beneficial to community.

"The North Dakota Supreme Court has instructed that the terms 'charity' or 'charitable' should be given a liberal and not a harsh or strained construction in order that a reasonable result be obtained effectuating the true intent of the constitutional and statutory provisions. Lutheran Camp. Coun. v. Board of Co. Com'rs, Ward Co., 174 N.W.2d 362, 366 (N.D. 1970); Riverview Place, Inc. v. Cass County, 448 N.W.2d at 640." N.D.A.G. 94-F-07.

[3] A "public purpose" "'has for objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political subdivision.'" Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237 (N.D. 1964), quoting Green v. Frasier, 176 N.W. 11 (N.D. 1920), aff'd 253 U.S. 233 (1920).

> All property described in this section to the extent herein limited shall be exempt from taxation:
>
> . . . .
> 8. All buildings belonging to institutions of public charity . . . together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, ...

(Emphasis supplied.)

The statutory language seems to be more restrictive than the constitutional language. In a 1988 letter to the Grand Forks City Attorney, this office considered the meaning of the term "belonging" with respect to the provisions of N.D.C.C. § 57-02-08(3). The opinion dealt with the exemption from taxation for property "belonging to" a political subdivision, and concluded it means ownership. N.D.A.G. Letter to Swanson (Mar. 7, 1988). The constitutional provision only requires an exclusive charitable or public use and does not address ownership.

In N.D.A.G. 95-F-05, this office compared the language of N.D. Const. art. X, § 5 to N.D.C.C. § 57-02-08(7) and (9), relating to exemptions for property used for public worship or religious services. The opinion concluded that the statutory provisions supplemented rather than restricted the constitutional provision and stated:

> Article X, Section 5 . . . is self-executing except for the savings provision in the last sentence. Lutheran Campus Council, 174 N.W.2d at 367 (Teigen, C.J., concurring specially); [N.D.A.G. 70-394]. Thus, unless this savings clause applies, property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature. This office has previously reached similar conclusions. See [N.D.A.G. 94-F-07] (property used for charitable or public purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08); [N.D.A.G. 81-13] (excess of two acres used exclusively for religious purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08(9)).

N.D.A.G. 95-F-05.

The opinion also noted that

> Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature. Engstad v. Grand Forks County, 84 N.W. 577, 578 (N.D. 1900). In Engstad, the

> Legislature had enacted a tax exemption only for property belonging to charitable institutions, but Article XI, Section 176 required the Legislature to exempt from tax all property used for charitable purposes, whether owned by institutions or private persons. The Supreme Court concluded that although the statutory exemption was narrower than mandated by the constitution, it was nevertheless valid. Engstad, 84 N.W. at 579.

Id.

Following Engstad in 1918, the former constitutional provision, article XI, section 176, was amended, inter alia, to eliminate the lead-in language ("the legislative assembly shall by a general law exempt from taxation") to the charitable and public purpose exemption clause. N.D.A.G. 95-F-05. As the present constitutional provision, N.D. Const. art. X, § 5, now reads, there are three specific clauses dealing with (1) exemption of classes of personal property from taxation, (2) immunity from taxation of state, county, and municipal property, and (3) the raising of revenue and situs of property, which all make explicit reference to the power or authority of the Legislative Assembly. The 1918 amendments deleted any reference to the power or authority of the Legislative Assembly in connection with the clause dealing with the charitable or public purpose property tax exemption.

As was further explained in N.D.A.G. 95-F-05 concerning the 1918 amendments to the charitable use clause:

> [T]his amendment made the exemptions in that section self-executing rather than a mandate to the Legislature, effectively overruling the Supreme Court's decision in Engstad which had been affirmed just two years earlier in State ex rel Linde v. Packard, 160 N.W. 150, 156 (N.D. 1916).
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> The clear purpose of making these exemptions self-executing was to remove the discretion of the Legislature under Engstad to restrict exemptions that are . . . mandated by the constitution.

N.D.A.G. 95-F-05; see also N.D.A.G. 94-F-07.

Although N.D.A.G. 95-F-05 did not construe N.D.C.C. § 57-02-08(8), the same reasoning would apply. Article X, section 5 is self-executing so that property used exclusively for charitable or other public purposes is exempt; the exemption under N.D.C.C. § 57-02-08(8) for buildings belonging to institutions of public charity supplements rather than restricts the constitutional exemption. Therefore, ownership is

not a necessary prerequisite for property to be exempt from taxation under the constitutional provision if it is used exclusively for charitable or other public purposes.

Consequently, it is my opinion that if the housing project is being used exclusively for charitable or other public purposes, it is exempt from ad valorem taxation under the self-executing provision of article X, section 5 of the North Dakota Constitution, regardless of the form of ownership of the project.[4]

Sincerely,

Wayne Stenehjem
Attorney General

rww/vkk

[4] Whether the property is used exclusively for charitable or other public purposes is a question of fact the city must determine. 95-F-05; N.D.A.G. 94-F-07. The following standards apply to this factual determination:

> [I]t is exempt only where the property is exclusively used to carry out the charitable purposes of the organization claiming the exemption. Riverview Place, Inc. v. Cass County, 448 N.W.2d 635, 640 (N.D. 1989). Further, "the burden of establishing that property comes within [a] tax-exemption . . . is upon the person or entity who claims the exemption, and . . . any doubt as to whether the property is used for charitable or benevolent purposes so as to exempt it from taxation must be resolved against the claimant." Riverview Place, Inc. v. Cass County, 448 N.W.2d at 640.

N.D.A.G. 94-F-07.