

**LETTER OPINION  
2009-L-13**

August 3, 2009

Mr. John T. Shockley  
Mapleton City Attorney  
PO Box 458  
West Fargo, ND 58078-0458

Dear Mr. Shockley:

Thank you for your letter asking about the new subsection to N.D.C.C. § 57-02-08 created by S.B. 2239 in 2009 relating to property tax exemptions for builders of new unoccupied single-family residential property. You ask whether a city must exempt the entire value of new unoccupied single-family residential property which remains owned by the builder, or whether this homebuilder's exemption may be limited by a city to less than the full value of the property. For the following reasons, it is my opinion that the governing body of a city or a county may limit the dollar value of the homebuilder exemption for residential property created by S.B. 2239.

ANALYSIS

Senate Bill 2239 created a new property tax exemption under N.D.C.C. § 57-02-08, which provides as follows:

42. a. New single-family residential property, exclusive of the land on which it is situated, is exempt from assessment for the taxable year in which construction began and the next two taxable years, if the property remains owned by the builder, remains unoccupied, and all of the following conditions are met:
  - (1) The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of property under this subsection by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing

body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.

(2) Special assessments and taxes on the property upon which the residence is situated are not delinquent.

- b. A builder is eligible for exemption of no more than ten properties under this subsection in a taxable year within each jurisdiction that has approved the exemption under this subsection. For purposes of this subsection, “builder” includes an individual who builds that individual’s own residence.<sup>1</sup>

You indicate that this new homebuilder exemption has created some uncertainty among cities and counties in the state. You state that some officials have taken the view that the homebuilder exemption is an “all-or-nothing” proposition, i.e., that because the provision states that new single-family residential property is “exempt from assessment,” these political subdivisions have no discretion as to the dollar amount of the exemption and if they approve this exemption, it must be for the true and full value of the residential property. On the other hand, some officials have argued that because of the language in S.B. 2239 stating that the “governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed,” cities and counties have discretion to limit the dollar value of this exemption.

Several rules of statutory construction apply. Generally, words used in any statute are to be understood in their ordinary sense.<sup>2</sup> Further, in enacting a statute, it is presumed that the entire statute is intended to be effective and that the law does not require idle acts; thus, every word or phrase of a statute is intended to have meaning.<sup>3</sup> As the North Dakota Supreme Court has noted:

“Statutes must be read to give effect to all of their provisions, so that no part of the statute is inoperative or superfluous.” Trinity Medical Center, Inc. v. Holum, 544 N.W.2d 148, 157 (N.D. 1996). “A statute must be construed as a whole to determine the legislative intent, and if possible, the entire statute

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<sup>1</sup> N.D.C.C. § 57-02-08(42) (emphasis added).

<sup>2</sup> N.D.C.C. § 1-02-02.

<sup>3</sup> N.D.A.G. 99-F-03.

must be given meaning because the law neither does nor requires idle acts.”  
State ex rel. Kusler v. Sinner, 491 N.W.2d 382, 385 (N.D. 1992).<sup>4</sup>

Thus, N.D.C.C. § 57-02-08(42) must be considered in its entirety in determining the question you raised. The “exempt from assessment” language in the first sentence of that provision must be construed together with the language appearing later requiring that “all of the following conditions [must be] met” and that “the governing body of the city or county may limit . . . exemptions under this subsection, including limitations on the time during which an exemption is allowed.”<sup>5</sup>

The language allowing a city or county governing body to “limit . . . exemptions” must be examined in its ordinary sense.<sup>6</sup> The term “limit” has been defined to mean to “confine or restrict within limits. . . . *Limit* refers principally to establishing a maximum, as in quantity, degree, space, or time, beyond which a person or thing cannot or may not go.”<sup>7</sup> Another definition of “limit” means to “abridge, confine, restrain, and restrict. To mark out; to define; to fix the extent of.”<sup>8</sup> Similarly, “[l]imit” also means to “[r]estrict, circumscribe, suppress, . . . demarcate, ration, inhibit, curb, prescribe, proscribe, assign, bar, specify, fix, trammel, appoint, impede, narrow.”<sup>9</sup> Thus, to limit an exemption means to confine, restrict, circumscribe, or to ration or to fix the extent of the exemption.

Also, the Legislature’s choice of the word “including” to describe the limitations on the time during which an exemption is allowed indicates that the kind of limitations on this property tax exemption should not be viewed narrowly. The North Dakota Supreme Court has noted that the word “include” or “including” in a statute ordinarily is not a term of limitation, but rather a term of enlargement and indicating an incomplete list.<sup>10</sup> Therefore, the example of limiting the time during which the exemption applies is not exclusive, and a governing body may adopt additional limits or conditions.

Consequently, a plain reading of the entire subsection creating this exemption indicates that the governing body of a city or county is authorized to place additional limits or conditions on any homebuilder exemption it authorizes. The exemption from assessment therefore applies only to the extent that the conditions in the statute are met. Those conditions include any reasonable limit or condition set by the governing body on the

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<sup>4</sup> Ridl v. EP Operating Ltd. P’ship, 553 N.W.2d 784, 787 (N.D. 1996).

<sup>5</sup> N.D.C.C. § 57-02-08(42).

<sup>6</sup> See note 2.

<sup>7</sup> The American Heritage Dictionary 732 (2d coll. ed. 1991).

<sup>8</sup> Black’s Law Dictionary 926 (6th ed. 1990).

<sup>9</sup> West’s Legal Thesaurus/Dictionary 459 (1985).

<sup>10</sup> See Leet v. City of Minot, 721 N.W.2d 398, 406 (N.D. 2006); Livingood v. Meece, 477 N.W.2d 183, 194 (N.D. 1991).

exemption. This construction is also consistent with the maxim of jurisprudence which provides that the greater contains the less,<sup>11</sup> i.e., if the governing body of a city or county is authorized to grant a complete exemption up to the full value of the property, that includes the authority to grant a lesser exemption.<sup>12</sup>

The governing body has a reasonable range of discretion<sup>13</sup> in setting limits or conditions, specifically including, but not limited to, reducing the time during which the exemption applies. Any other reasonable limit or condition may also be set by the governing body.

It might be argued that there is an internal conflict within the homebuilder exemption because the first sentence indicates that new single-family residential property is flatly exempt from assessment, while the language later in the subsection allows the city or county governing body to limit or impose conditions upon exemptions. However, “whenever, in the same statute, several clauses are irreconcilable, the clause last in order of date or position shall prevail.”<sup>14</sup> Thus, even if it were deemed that an internal conflict existed, the language authorizing a city or county to “limit . . . exemptions” would prevail over the language regarding “exemp[tion] from assessment,” since it is last in order. Further, the Legislature specifically stated that a governing body may choose to limit the time period for the exemption while earlier stating that the exemption was for the “year in which construction began and the next two taxable years.” This implies that the Legislature intended that the limits or conditions allowed to be imposed by the local governing body may reduce the more general terms set out in the statute. Instead, the

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<sup>11</sup> See N.D.C.C. § 31-11-05(27).

<sup>12</sup> This construction is also consistent with the legislative history of S.B. 2239 which is replete with references indicating the purpose of the bill was to grant cities and counties flexibility and discretion in implementing the homebuilder property tax exemption. See, e.g., Hearing on S.B. 2239 Before the House Comm. on Fin. and Taxation, 2009 N.D. Leg. (Mar. 3) (Statement of Sen. Cook) (“The attempt for this bill is to give as much discretion as possible to the local government.”); (Statement of Rep. Glassheim) (“the local government has options and can propose the conditions they want”); (Statement of Doreen Riedman, N.D. Ass’n of Builders) (“This is only enabling legislation that still must be approved . . . . The governing body may limit or impose conditions, including length of time during which the exemption is allowed.”).

<sup>13</sup> The rule of strict construction applies when defining a local government’s power, but once defined, strict construction no longer applies and the manner and means of exercising those powers, where not prescribed by the Legislature, are left to the reasonable discretion of the local authority. These powers may not be declared invalid unless clearly arbitrary, unreasonable, and without relation to public health, safety, morals, or public welfare. GO Comm. ex rel. Hale v. City of Minot, 701 N.W.2d 865, 870 (N.D. 2005).

<sup>14</sup> N.D.C.C. § 1-02-08.

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general terms should be considered as the maximum amount and duration of the exemption.

For the foregoing reasons, it is my opinion that the governing body of a city or a county may limit the dollar value of the homebuilder exemption for residential property created by S.B. 2239.

Sincerely,

Wayne Stenehjem  
Attorney General

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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.<sup>15</sup>

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<sup>15</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).