

LETTER OPINION
96-L-183

October 23, 1996

Mr. William E. Woods, Jr.
City Attorney
City of Parshall
PO Box 159
Parshall, ND 58770

Dear Mr. Woods:

Thank you for your letter asking questions about the City of Parshall's ability to tax land and homes built in Parshall by the housing authority of the Three Affiliated Tribes.

You state that you "are aware of a state law which exempts Indian Housing Authorities from taxation" and ask whether this law "is federally mandated or one created by the state legislature."

The statute to which you refer is N.D.C.C. § 23-11-09, which states, in part:

The property of an authority, including an authority created under Indian laws recognized by the federal government, is declared to be public property used for essential public and governmental purposes and is exempt from all taxes and special assessments of the city, the county, the state, or any political subdivision thereof.

The "authority" to which the statute refers is a housing authority. See N.D.C.C. §§ 23-11-01 and 23-11-02.

N.D.C.C. § 23-11-29 was enacted in 1937. 1937 N.D. Sess. Laws, ch. 102, § 22. It was amended in 1971 to add its reference to Indian housing authorities. 1971 N.D. Sess. Laws, ch. 260, § 2. Nothing in the legislative history of the 1971 change indicates that it was the result of a federal

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mandate. A supporter of the legislation stated that its purpose was merely to ensure "that property under the Indian housing authority is put in the same position as city and county or political subdivisions in regard to exemption of taxes." Hearing on S. 2506 Before the Senate Comm. on State & Federal Government, 42nd N.D. Leg. (Feb. 8, 1971) (Testimony of Asst. Attorney General Paul Sand). I was unable to locate any federal statute specifically directing North Dakota to exempt tribal housing authorities from state and local taxation.

You also ask whether Parshall, even if it is prohibited by N.D.C.C. § 23-11-09 from taxing land owned by the tribal housing authority, could tax the authority's houses if they were somehow considered separate from the land. The statute's prohibition is not limited to any particular kind of property interest held by the housing authority. The statute refers to "[t]he property of an authority . . ." This is all-encompassing. Furthermore, the statute's prohibition is not confined to any particular kind of tax, but exempts housing authorities from "all taxes and special assessments . . ." "It is clear that the legislative intent [of N.D.C.C. § 23-11-29] is that any property held by a housing authority . . . shall be exempt from taxation." Ferch v. Housing Authority of Cass County, 59 N.W.2d 849, 865 (N.D. 1953). (Emphasis added.) Therefore, it is my opinion that a city may not tax any property of a tribal housing authority.

Even if Parshall is able to convince the Legislature to remove tribal housing authorities from N.D.C.C. § 23-11-09, that does not necessarily mean Parshall will be able to tax a tribal housing authority or its property. While Congress may not have required the North Dakota Legislature to include tribal housing authorities in the statute's exemption, principles of federal Indian law nonetheless may require that result. If the statute's exemption of tribal housing authorities were removed, federal Indian law would need to be examined to determine if any taxation of property owned by tribal housing authorities is lawful.

Sincerely,

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Heidi Heitkamp
ATTORNEY GENERAL

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