

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 97-F-02

Date issued: March 18, 1997

Requested by: Earle R. Myers, Jr., Richland County
State's Attorney

- QUESTION PRESENTED -

Whether a home rule county may establish by ordinance a method for determining what property is taxable as commercial property.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a home rule county may not establish by ordinance a method for determining what property is taxable as commercial property.

- ANALYSIS -

"All property in this state is subject to taxation unless expressly exempted by law." N.D.C.C. § 57-02-03. A particular state law defines certain kinds of property for the purpose of property assessment:

As used in this title, unless the context or subject matter otherwise requires:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on

or after March 30, 1981, is not agricultural property when any three of the following conditions exist:

- a. The land is platted by the owner.
- b. Public improvements including sewer, water, or streets are in place.
- c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
- d. Property is zoned other than agricultural.
- e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
- f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
- g. The property sells for more than four times the county average true and full agricultural value.

. . . .

4. "Centrally assessed property" means all property except railroad operating property, which is assessed by the state board of equalization pursuant to chapters 57-06 [public utilities] and 57-32 [express and air transportation companies].

5. "Commercial property" means all property, or portions of property, not included in the classes of property defined in subsections 1, 4, 11, and 12.

. . . .

11. "Railroad property" means the operating property, including franchises, of each railroad operated in this state including any electric or other street or interurban railway.

12. "Residential property" means all property, or portions of property, used by an individual or group of individuals as a dwelling, including property upon which a mobile home is located but not including hotel and motel accommodations required to be

licensed under chapter 23-09 nor structures providing living accommodations for four or more separate family units nor any tract of land upon which four or more mobile homes are located.

. . . .

N.D.C.C. § 57-02-01 (emphasis added). Thus, all property that is not expressly exempted from taxation by law, and is not defined in subsections 1, 4, 11, and 12 of N.D.C.C. § 57-02-01 is commercial property under state law for purposes of property assessment.

Counties have only those powers expressly conferred upon them by the Legislature, or those necessarily implied from the powers expressly granted. Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924); County of Stutsman v. State Historical Soc'y, 371 N.W.2d 321, 329-30 (N.D. 1985). The Legislature has enabled counties to acquire certain powers of self-government if those powers are included in an approved home rule charter and are implemented through ordinances, including the power to:

2. Control its finances and fiscal affairs; appropriate money for its purposes, and make payments of its debts and expenses; subject to the limitations of this section levy and collect property taxes, sales taxes, motor vehicle fuels and special fuels taxes, motor vehicle registration fees, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; establish charges for any county or other services to the extent authorized by state law, and establish debt and mill levy limitations; provided, that all property in order to be subject to the assessment provisions of this subsection must be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. A charter or ordinance or act of a governing body of a home rule county may not supersede any state law which determines what property or acts are subject to, or exempt from, ad valorem or sales and use taxes.

N.D.C.C. § 11-09.1-05(2) (emphasis added). Thus, even when exercising additional powers under home rule authority, all property must be assessed in a uniform manner as prescribed by the State Board

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of Equalization and the State Supervisor of Assessments. See N.D.C.C. §§ 57-01-05(1),(2),(6), 57-13-03, and 57-13-04. A home rule county's establishment of a method for determining what property is taxable as commercial property would undermine this requirement that all property must be assessed in a uniform manner.

In addition, N.D.C.C. § 11-09.1-05(2), quoted above, states that a home rule charter or ordinance or act of a governing body in a home rule county may not supersede any state law which determines what property is subject to or exempt from ad valorem taxes. North Dakota's property tax is an ad valorem tax because it is imposed on the value of property. See N.D.C.C. § 57-02-27. If a home rule county's establishment, by ordinance, of a method for determining what property is taxable as commercial property would result in changing what property is subject to or exempt from ad valorem taxes under state law, such ordinance would go beyond the authorized powers of a home rule county.

In conclusion, because a home rule county's establishment of a method for determining what property is taxable as commercial property would undermine the uniformity of assessments and may result in changing what property is subject to or exempt from ad valorem taxes under state law, it is my opinion that a home rule county may not establish a method for determining what property is taxable as commercial property.

- 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.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Leah Ann Schneider
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