

N.D.A.G. Letter to Goetz (Feb. 18, 1987)

February 18, 1987

Honorable William G. Goetz
Vice Chairman
Finance & Taxation Committee
House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Representative Goetz:

Thank you for your letter dated February 12, 1987, requesting my opinion as to whether a statute enacted by the Legislative Assembly providing for a retroactive tax exemption from the privilege tax on coal conversion facilities would constitute a donation in violation of N.D. Const. Art. X, §18.

N.D. Const. Art. X, §18 provides, in part, that "neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor..."

In recognition of similar language in the California Constitution, the California Supreme Court held that "[w]here a tax has become due, a subsequent act of the Legislature reducing the tax by reason of the change in the exemptions, tax rates, or for that matter in any way, is held to be a gift of state monies and is prohibited by . . . the California Constitution." In Re Shinker's Estate, 303 P.2d 745, 748 (Ca. 1956). See also Chronis v. State ex rel. Rodriguez, 670 P.2d 953 (N.M. 1983); In re Harbor's Estate, 105 N.Y.S.2d 103 (1951).

Similarly, the North Dakota Supreme Court has held that a statute which authorized a refund to the holder of a tax sale certificate against a tract of land sold by the state under contract, when the contract had been cancelled by the state, made a donation to the tax sale certificate holder in violation of N.D. Const. Art. X, §18 because the statute provided that the refund be made on tax sale certificates issued before the law was enacted. Petters & Co. v. Nelson County, 281 N.W. 61 (N.D. 1938). See also Solberg V. State Treasurer, 53 N.W.2d 49 (N.D. 1952); Herr v. Rudolph, 25 N.W.2d 916 (N.D. 1947).

Therefore, it is my opinion that a statute enacted by the Legislative Assembly providing for a retroactive tax exemption from the privilege tax on coal conversion facilities would constitute a donation in violation of N.D. Const. Art. X, §18.

Sincerely,

Nicholas J. Spaeth

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cc: Senator Rick Maixner