

**N.D.A.G. Letter to Swanson (March 7, 1988)**

March 7, 1988

Mr. Howard D. Swanson  
Office of the Grand Forks  
City Attorney  
P.O. Box 1950  
Grand Forks, ND 58206

Dear Mr. Swanson:

Thank you for your letter of January 27, 1988, wherein you inquire whether or not property held in trust for a park and recreation commission is exempt from taxation pursuant to N.D.C.C. § 57-02-08(3) or § 57-02-08(10).

It is my understanding from reading your letter, and the enclosures that you sent with it, that several lots located in the city of Grand Forks and owned by the "Grand Forks State and County Fair Association" were "conveyed to First National Bank in Grand Forks as Trustee for the Grand Forks County Park and Recreation Commission." It is my further understanding that while these lots are located "adjacent to the designated fairground property," they are either vacant or are leased for private business purposes and are not "utilized for the purpose of holding agricultural fairs."

Finally, since these lots have been assessed by the city of Grand Forks for the purpose of ad valorem taxation, applications for abatement and settlement of taxes have been filed with Grand Forks County in the name of the "Grand Forks County Park and Recreation Commissioners." These abatement applications are currently before the Grand Forks County Board of Commissioners awaiting a recommendation from the city of Grand Forks. N.D.C.C. § 57-23-06.

For the following reasons, it is my opinion that the subject lots are not exempt under N.D.C.C. § 57-02-08(3).

N.D. Const. art. X, § 5 (formerly 176) provides that "[t]he property of . . . municipal corporations . . . shall be exempt from taxation." With reference to this language, the North Dakota Supreme Court has found that "[i]t does not say property used by the municipality, but property of the municipality. In this case ownership is the test of exemption. . . . It is not necessary to discuss the cases which turn upon the use to which the property is put as they are not applicable to the situation here." Otter Tail Power Co. v. Degnan, 252 N.W. 619, 621 (N.D. 1934).

N.D.C.C. § 57-02-08(3) exempts from taxation "[a]ll property belonging to any political subdivision."

It is my understanding that over the last three decades, to be consistent with the supreme court interpretation in Otter Tail, the Office of the Tax Commissioner has read this exemption in harmony with the above-discussed constitutional provision so that "belonging," in the context of this exemption, could only mean ownership. The several amendments to this exemption have not affected this interpretation.

In a case involving the application of the ad valorem property tax statutes, the North Dakota Supreme Court found that "[a]lthough plain terms of a statute may not be contradicted by an administrative interpretation thereof, the practical construction by the Tax Commissioner of an ambiguous statute is entitled to some weight in construing the statute." Ladish Malting Co. v. Stutsman County, 351 N.W.2d 712, 720 (N.D. 1984). See also Rocky Mountain Oil & Gas Ass'n. v. Conrad, 405 N.W.2d 279, 283 (N.D. 1987).

I am of the opinion that the long-standing interpretation of the Tax Commissioner is correct. Therefore, since the subject lots are not owned by a political subdivision, they are not exempt under the provisions of N.D.C.C. § 57-02-08(3).

Further, if the subject lots were deemed to be exempt under N.D.C.C. § 57-02-08(3), any possessory interest in those lots held by a nonexempt person would be subject to taxation on the value of the possessory interest. N.D.C.C. §§ 57-02-03, 57-02-04(1)(2). See Otter Tail Power Co. v. Degnan, 252 N.W. 619 (N.D. 1934); Lower Yellowstone Irrigation District No. 2 v. Nelson, 2 N.W.2d 180 (N.D. 1941); and United States v. Fresno County, 429 U.S. 452 (1977). If a subject lot is "held under a lease for a term of years, . . . [it] shall be considered, for all purposes of [valuation for] taxation, as the property of the person so holding the same." N.D.C.C. § 57-02-26(1); see also N.D. Op. Att'y Gen. 88-7.

For the following reasons, it is my opinion that the subject lots are not exempt under N.D.C.C. § 57-02-08(10).

N.D.C.C. § 57-02-08(10) exempts from taxation "[p]roperty of an agricultural fair association duly incorporated for the exclusive purpose of holding agricultural fairs."

While it may be shown that the subject lots are owned by an agricultural fair association, they are not "for the exclusive purpose of holding agricultural fairs." N.D.C.C. § 57-02-08(10). The subject lots are either vacant or are leased for private business use. While reviewing similar statutory language under N.D.C.C. § 57-02-08(8), the North Dakota Supreme Court held the following in YMCA of N.D. State Univ. v. Board of County Com'rs, 198 N.W.2d, 241, 244 (N.D. 1972):

Ownership of the property in question by an institution of public charity such as the YMCA does not, ipso facto, exempt the property from taxation. The property itself must be devoted to charitable purposes and it must actually be used in carrying out the charitable purposes of the one claiming the exemption.

Therefore, since the subject lots are not "for the exclusive purpose of holding agricultural

fairs," they are not exempt under N.D.C.C. § 57-02-08(10).

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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