

N.D.A.G. Letter to Engelman (May 19, 1988)

May 19, 1988

Mr. Jerald L. Engelman
Vinje & Engelman, P.C.
P.O. Box 547
Mayville, ND 58257-0547

Dear Mr. Engelman:

Thank you for your letter of May 3, 1988, wherein you refer to my March 18, 1988, letter to you concerning the question of whether the Larry Dormier residence in Mayville qualifies for the farm residence exemption under N.D.C.C. § 57-02-08(15). Specifically, you have now informed me that Mr. Dormier not only farms land in Traill County but that he "farms the majority of his land . . . in Steele County, North Dakota."

Based upon this additional fact, you wish to know whether the Steele County Board of Commissioners is entitled to be involved in this abatement process or whether some additional procedures should be followed regarding this abatement request. You also wish to know whether this additional fact would change any of the conclusions that I reached in my March 18, 1988, letter.

The ad valorem assessment on Mr. Dormier's residence which was the subject of his abatement action was a charge on the real estate and not a personal obligation. N.D.C.C. §§ 57-02-03, 57-02-04, 57-02-11, 57-02-34, and 57-02-40; Hertzler v. Cass County, 96 N.W. 294 (N.D. 1903). Therefore, the abatement action under N.D.C.C. ch. 57-23 was a proceeding in rem.

"In North Dakota, counties are creatures of the constitution and may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority." County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 329 (N.D. 1985).

There is no provision which would confer jurisdiction upon the Steele County Board of Commissioners to have any involvement with an abatement action regarding real estate located in Traill County. Under N.D.C.C. ch. 57-23, that jurisdiction lies solely with the Traill County Board of Commissioners.

Furthermore, for the purpose of the farm residence exemption under N.D.C.C. § 57-02-08(15), it makes no difference if Mr. Dormier's farmland is located in one county, more than one county, or, for that matter, in more than one state.

Thank you for the additional information concerning this issue. However, I believe the conclusions that I reached in my March 18, 1988, letter remain accurate.

Sincerely,

Nicholas J. Spaeth

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cc: Stuart A. Larson, Traill County State's Attorney