

Overruled, see N.D.A.G. 2002-L-31, N.D.A.G. 2002-L-70

**N.D.A.G. Letter to Manbeck (July 25, 1990)**

July 25, 1990

Mr. Douglas Manbeck  
Nelson County State's Attorney  
P.O. Box 428  
Lakota, ND 58344

Dear Mr. Manbeck:

Thank you for your July 5, 1990, letter addressing several issues.

The copies of the letter opinions mentioned in your letter are enclosed for your review.

Your first question concerns primary elections and the ability to obtain a recount. N.D.C.C. § 16.1-16-01 describes those instances when an election recount is available to a candidate. Specifically, N.D.C.C. § 16.1-16-01(l)(a) states that a recount must be conducted when a candidate fails "to be nominated in a primary election by one percent or less of the highest vote cast for a candidate of his party for the office sought." This is the only provision within this statute describing when a recount may be held in a primary election.

The phrase "a candidate of his party for the office sought", limits the recount to partisan offices and does not authorize a recount in no-party office primaries. In a no-party office election, it would not be possible to determine when a recount may be held because there is no highest vote cast "for a candidate of his party for the office sought."

This conclusion is supported by legislative history. The predecessor statute to N.D.C.C. §§ 16.1-16-01 is N.D.C.C. § 16-13-47.1. As enacted in 1971, N.D.C.C. § 16-13-47.1 provided that a recount at a primary election would only be available to those seeking a congressional, state, or legislative office. Each of these are partisan offices. A recount was not available to no-party office candidates. A recount was only available if the person failed to be nominated in a primary election to such an office by less than 2% "of the highest vote cast for a candidate of his party for the office sought." Since N.D.C.C. § 16-13-47.1 was enacted in 1971, the Legislature has extended the application of recount provisions to no-party legislative or county offices at the general election. N.D.C.C. § 16.1-16-01. However, the Legislature has not extended election recounts for these offices at the primary election level.

Your second question relates to the ad valorem tax exemption for farm structures and improvements located on agricultural lands. Specifically, you inquire whether a grain bin owned by a farmer and used as part of the farmer's farming operation is exempt under

N.D.C.C. § 57-02-08(15)(a) if the bin is located on a railroad lease site which was platted before March 30, 1981. I have been informed that it is the opinion of the Office of the Tax Commissioner that the grain bin is exempt from taxation under N.D.C.C. § 57-02-08(15)(a). For the following reasons, it is my opinion that the opinion of the Office of the Tax Commissioner is correct.

The exemption for farm structures is found in N.D.C.C. § 57-02-08(15)(a), which states:

57-02-08. Property exempt from taxation. All property described in this section to the extent herein limited shall be exempt from taxation:

15. a. All farm structures, and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or structures used in connection with a retail or wholesale business other than farming, even though situated on agricultural land, shall not be exempt under this subsection.

The definition of "agricultural property" is found in N.D.C.C. § 57-02-01(1), which states, in relevant part:

"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.

(Emphasis supplied.) The underlined language was enacted by the 1989 Legislative Assembly. 1989 Sess. Laws ch. 688, § 1. This language allows platted land to be reclassified as agricultural property even if it was platted before March 30, 1981.

There are two requirements for a structure to qualify for the exemption provided for in N.D.C.C. § 57-02-08(15). It must be located on agricultural land and it must be used as a part of a farm plant.

Agricultural land is defined by use so that any land that is "used for raising crops" is agricultural land. Crops that are grown and harvested are customarily stored by the farmer until they are marketed. This storage of harvested grain falls within the meaning of the phrase "used for raising crops" in much the same way that a machine shed used for

storing the farm machinery would fall within that definition. Because it is a customary practice in raising crops to store the grain grown by the farmer in a farm operation, the land that is used for storing that grain is agricultural.

The use of the structure is the second test for the farm building exemption. The use of this bin is for storage of grain grown on the farm operated by the individual who uses the bin. The farm plant is the entire farm enterprise operated as an economic unit. If a bin is used as part of the economic farm unit, then it is apparent that the bin is a farm structure.

I hope this information and discussion is helpful to you.

Sincerely,

Nicholas J. Spaeth

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