

OPINION
66-390

January 18, 1966 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Per Capita School Tax - National Guard Exempt

This is in answer to your letter of January 11, 1966, in which you requested my opinion on the question of whether members of the North Dakota National Guard are exempt from payment of the one dollar per capita school tax that is imposed pursuant to section 57-15-23 of the North Dakota Century Code.

In addition to our own research in the matter, we have considered the various materials and information which you furnished showing the legislative history of the sections of law involved, prior rulings of this office, and treatment of the matter in the annual issues of the Assessment Manual published and distributed by your office.

It is our opinion that members of the North Dakota National Guard are exempted by section 37-01-27 of the North Dakota Century Code from payment of the per capita school tax that is imposed by section 57-15-23 of the North Dakota Century Code.

The reasons for this conclusion are explained in the following paragraphs.

For many years prior to 1931 our laws provided for two kinds of "head" taxes. One of these provisions provided that "the county auditor shall also levy a tax of one dollar on each elector in the county for the support of the public schools * * *" and the other provided that "the county auditor shall levy for road purposes a poll tax of one dollar and a half on every male person between the ages of twenty-one and fifty years not exempted by law." See subsections (d) and (e) of section 4 of chapter 235, Session Laws of 1929. Chapter 247, Session Laws of 1931, repealed both of these provisions and enacted the following:

SECTION 1. PER CAPITA SCHOOL TAX.) The County Auditor shall each year levy a tax of one dollar (\$1.00) on each person twenty-one (21) years of age or over who on the first day of April in each year has resided in the State ninety days or more."

This 1931 enactment was amended by chapter 284, 1941 Session Laws, to prevent the tax from being levied on the same person by two or more counties in the same year but it did not change the provision quoted above from the 1931 law.

The Assessment Manuals issued annually by the Tax Commissioner for several years immediately after the repeal of the road poll tax

referred to the per capita school tax as a school poll tax, thus indicating that the officials supervising the administration of the law regarded the per capita school tax as a poll tax. This is also evident from the 1943 Code Reviser's note to section 18-0309 of the North Dakota Revised Code of 1943, now section 18-03-09 of the North Dakota Century Code, which exempts certain volunteer firemen "from the payment of poll tax and from the payment of the per capita school tax." Webster's International Dictionary, Second Edition, Unabridged, defines poll tax as "a tax of so much per head or person, levied usually on every male person over a given age." Similarly, Bourvier's Law Dictionary defines "poll" as "A head. Hence poll-tax is a name of a tax imposed upon the people at so much a head."

These rules of construction and facts, we believe, compel the holding that members and former members of the National Guard should continue to be regarded as exempt from the per capita school tax under the conditions set out in section 37-01-27.

HELGI JOHANNESON

Attorney General