

OPINION
67-260

August 2, 1967 (OPINION)

Mr. William D. Yuill

Assistant State's Attorney

Cass County

RE: Taxation - Exempt Property - Fire Protection Assessment

This is in regard to your letter of July 11, 1967, in which you requested my opinion as to whether the real property owned by the Red River Valley Council of the Boy Scouts of America is exempt from a fire protection assessment levy.

In your letter you stated that the fire protection assessment has been made and an application has been made by the Council for abatement of the assessment and for reclassification of its organization under the provisions of section 57-02-08 of the North Dakota Century Code, so that the organization will be exempt in future years.

From the attachments to your letter, we note that the lot and building owned by the Boy Scouts Council was assessed for fire protection purposes under the assumption that property tax exemption applicable was subsection 11 of section 57-02-08 of the North Dakota Century Code, which subsection exempts the real and personal property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations. This subsection exempts the property involved from general property taxation, but specifically provides that the property "shall be subject to taxation for the cost of fire protection services furnished by any municipal corporation in which said property is located."

It is further noted that the Red River Valley Council of the Boy Scouts of America contends that its property is exempt under either subsection 6 or 8 of section 57-02-08 of the North Dakota Century Code. Subsection 6 exempts schoolhouses, academies, colleges, institutions of learning, etc., whereas subsection 8 exempts "All buildings and contents thereof belonging to institutions of public charity * * *, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit * * *."

Although a boy scout council may be regarded as "like organizations" within the meaning of subsection 11 of section 57-02-08, and although one of the purposes of a boy scout organization is the educational development of youth, it would appear that the real property in question would be exempt pursuant to subsection 8 of section 57-02-08 of the North Dakota Century Code. This opinion is based upon the following:

The Supreme Court of North Dakota in *Ex rel Linde v. Packard*, 35 N.D. 298, 160 N.W. 150, concluded that Masonic bodies were institutions of

public charity for property tax exemption purposes. In reaching this conclusion the Court stated:

In the broadest sense charity includes whatever proceeds from the senses of moral duty or from humane feelings towards others, uninfluenced by one's own advantage or pleasure. 6 Cyc. 897.

Ruling Case Law (5 R.C.L. pp 292, 293) says: 'A precise and complete definition of a legal charity is hardly to be found in the books, but it is certain that in legal parlance the word "charity" has a much wider significance than in common speech. Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature. Another definition capable of being easily understood and applied is that given by Lord Camden as follows: "A gift to a general public use, which extends to the poor as well as the rich." The theory of this is that the immediate persons benefited may be of a particular class, and yet if the use is public in the sense that it promotes the general welfare in some way, it has the essentials of charity. Again, charity has been declared to be active goodness; the doing good to our fellow men, fostering those institutions that are established to relieve pain, to prevent suffering, and to do good to mankind in general, or to any class or portion of mankind.'

In addition to the above, the courts of other states have generally upheld property tax exemptions for boy scout organizations under statutes granting property tax exemption for property owned by charitable organizations. In this connection see *Tharpe v. Central Georgia Council of Boy Scouts of America*, 185 Ga. 810, 196 S.E. 762. In this case the Georgia Court held that the Boy Scouts organization was an institution of "public charity" within the meaning of a property tax exemption statute exempting property owned by public charities. In this case the Court also considered the exempt status of the boy scout organizations under a statute exempting property owned by educational organizations, but expressed doubt as to whether the statute was applicable. Also, in connection with the charitable status of boy scout organizations, see the cases cited in 116 A.L.R. pages 378-380.

Although it would appear that the property is exempt from assessment and taxation, including fire protection assessment, pursuant to subsection 8 of section 57-02-08 of the North Dakota Century Code, it would appear that the county commissioners would not have the authority to reclassify the organization through the abatement process to exempt the organization in future years, as under the abatement provisions of the North Dakota law, the county

commissioners have only the authority to act upon the abatement pertaining to the particular assessments that have been made. Under the North Dakota property tax law, the duty of assessing property is imposed upon the assessor who must make a determination as to the taxability or exempt status of the property. However, if the use of the property by the Boy Scouts of America is such that it qualifies under subsection 8 of section 57-02-08 as exempt property, it would appear that the assessor would exempt the property in future years pursuant to that subsection.

HELGI JOHANNESON

Attorney General