OPINION
68-396

August 7, 1968 (OPINION)

Honorable Edwin Sjaastad

Commissioner, Tax Department

RE: Taxation - Exemptions - Farm Buildings

This is in response to your request for an opinion pertaining to the exemption from property taxes for farm buildings and other farm improvements.

Subsection 15 of section 57-02-08 of the North Dakota Century Code is quoted as follows:

> PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:
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> * * *
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> 3. 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.
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> * * *."

Subsection 10 of section 57-02-01 creates a presumption regarding farm property and is quoted as follows:

> 57-02-01. DEFINITIONS. As used in this title, unless the context or subject matter otherwise requires:
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> 0. There shall be a presumption that a unit of land is not a farm unless such unit contains a minimum of five acres which normally provides the owner, lessee, or occupant farming the land with not less than fifty per cent of his annual income.
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> * * *."

The Supreme Court of the State of North Dakota rendered the following decisions construing Subsection 15 of section 57-02-08 of the North Dakota Century Code: Eisenzimmer v. Bell, 75 N.D. 733, 32 N.W.2d. 89l; Boehm v. Burleigh County, North Dakota, 130 N.W. 170; Rice v. Board of County Commissioners of Benson County, North Dakota, 135 N.W.2d. 597; and Frederickson v. Burleigh County, North Dakota, 139 N.W.2d. 250.

The Court in the above cases in construing this statutory exemption established that it was the intent of the Legislature in enacting the

subsection to encourage the construction of buildings and other improvements on farms and, to that end, classified the particular type of property involved. The Court further found that two tests exist to determine whether the exemption is applicable, the first test being the character of the land on which the improvements are situation; that is, whether the land on which the buildings and improvements are situated constitutes agricultural land or whether the land is classified as urban or other property; the second test relates to the nature of the structures of improvements; that is, whether they are used, or intended for use, as a part of a farm plant.

The Court, in the Eisenzimmer case, concluded that buildings situated on platted property within an incorporated city constituted urban property, whereas the Court in the Rice case held that unplatted land located within the corporate limits of a municipality constituted agricultural lands, as no part of the land in question in that case had been dedicated for public purposes. The other decisions of the Court did not deal with the character of the land involved, but dealt with the use of the land and buildings thereon as farms or farm buildings by the respective owners. The Court in these cases, however, recognized that the term "farm" as used in Subsection 15 of section 57-02-08 is an "inexact" term and therefore is difficult to apply, but concluded that the term as ordinarily understood for tax exemption purposes may be defined as follows:

> As a rural tract or plot of ground with buildings and improvements devoted to agricultural purposes and implies the cultivation of the land under natural conditions for the purposes of production or use in aid thereof." (130 N.W.2d. 170 at 176; 139 N.W.2d. 250 at 253.)

The Court, in addition, cited with approval the following definition of the term "farm" as found in Webster's Third New International Dictionary:

> Any tract of land whether consisting of one or more parcels devoted to agricultural purposes generally under the management of a tenant or owner; any parcel or group of parcels of land cultivated as a unit." (130 N.W.2d. 170 at 173-174; 139 N.W.2d. 250 at 253.)

In your request for an opinion, you set out numerous factual situations, and in answer thereto I will quote the questions which you have presented.

Question No. 1 is quoted as follows:

> Under Chapter 40-48, N.D.C.C., a city may adopt a municipal master plan for the physical development of the city, including territorial jurisdiction over the subdivision or platting of all land lying outside of but within six miles of the corporate limits of the city (see sections 40-48-18 and 40-48-26) and including control over the erection of buildings in the master plan area (see section 40-48-25) and the architecture of such buildings (see section 40-48-09).

Somewhat typical of the exemption problem arising in such a master plan area is the case where a person engaged full time in farming wishes to build a home for himself to live in on the land farmed by him outside of the city but within the master plan area. Under one of these master plan requirements he must plat a subdivision of not less than five lots and build his home on one or more of the lots in that subdivision. The subdivision having been platted out of his farm land, it of course adjoins his remaining farm land. Is such a farmer's home exempt under Subsection 15 of section 57-02-08 under each of the following various circumstances:

a. If no other homes or structures have been built on any of the other lots in the subdivision?

b. If the farmer builds his home on one of the lots and sells the other four lots to other farmers or nonfarmers who also build homes on them?

c. If the farmer, instead of platting a subdivision out of his own land, buys a lot in another platted subdivision outside of the city but within the master plan area, which subdivision does not adjoin the land he farms -

   1) will his home be exempt as a farm residence if it is the only one in the platted subdivision?

   2) will his home be exempt as a farm residence if his home in the subdivision is surrounded partly or entirely by other homes on other lots in the subdivision?

d. If the farmer's farm land is located outside of the master plan area, but his home is located on a lot in a platted subdivision of the master plan area, is his home exempt if -

   1) his lot adjoins his farm land; that is, if the lot on which his home is situated is separated from his farm land only by the outer boundary of the master plan area?

   2) the lot on which his home is situated is physically separated from his farm land by other land lying between?

With respect to the above question, it is observed that Chapter 40-48 provides for the creation of a municipal master plan and establishes the territorial jurisdiction of the planning commission. The apparent purpose of the master plan is to accomplish a coordinated development of a municipality that will promote the life, health, safety, morals and general welfare of the present, as well as future, citizens of the municipality.

The establishment of a master plan, however, does not in and of itself constitute a platting of the area within the jurisdiction of the master plan, nor does it constitute an annexation of the property

into the incorporated limits of a city. The property located within the jurisdiction of a master plan area, therefore, if platted, must be platted in accordance with Chapter 40-50 of the North Dakota Century Code, and if the property is annexed, the annexation must be accomplished in accordance with Chapter 40-5l.1 of the North Dakota Century Code. However, both the platting and the annexation are subject to the approval of the planning commission.

In addition, pursuant to the definitions of the term "farm" as set out by the North Dakota Supreme Court in the above referred to cases, it would appear that property owned by a farmer need not be contiguous in order to constitute a farming unit, and that two or more tracts of land may be somewhat removed from each other and the acreage in them may be considered together to determine whether they constitute a farm. However, the acreage of the two tracts combined must be sufficiently large to constitute a farm, and if the acreage is less than five acres, the presumption provided by Subsection 10 of section 57-02-01 becomes operative.

Question No. 1 is predicated upon a factual situation in which the farmer, under a particular master plan, is required to plat a subdivision prior to the construction of his home within the master plan jurisdiction but located outside the limits of a city. Under the factual situation presented by you, there appears to be no question that the owner of the lot or lots is a farmer and that he is using the buildings situated on the lot or lots as farm buildings or improvements. Consequently, under this factual situation, it is assumed that the owner of the lot has met the second test set down by the Supreme Court relating to the nature of the structures and the use thereof, and the only questions that remains is whether the first test, as set down by the Court, has been met, that is, whether the property constitutes agricultural land. The answer to this question depends upon whether the particular plat as filed constitutes an offer of dedication of streets, alleys, etc., and whether the offer, statutory or otherwise, has been accepted by the public.

The recording of a plat under normal circumstances constitutes an offer to the public to dedicate the streets and alleys laid out in the plat, which offer, to be a completed dedication, must be accepted on the part of the public. This acceptance may be presumed or may be manifested by the acts of the public or by the acts of municipal officials which indicate an assumption of dominion over the property dedicated. In this connection, see Hille v. Nill, 58 N.D. 5l36, 262 N.W. 635; Grand Forks v. Flom, 79 N.D. 289, 56 N.W.2d. 324; and Ramstad v. Carr, 3l N.D. 506, 154 N.W. 195.

Therefore, in answer to your first question, it is my opinion that, as the property is located outside the limits of an incorporated city, the property would retain its characteristic as agricultural land unless there has been an offer of dedication and an acceptance thereof; and in the absence of an offer and an acceptance, the home owned by the farmer and used by him as farm buildings and improvements would qualify for the exemption. This would be true even though the farmer builds his home on one of the lots and sells the other four lots to other farmers and nonfarmers who also build homes on them. The homes built by nonfarmers, however, would not qualify for the exemption because they would not meet the second test

set down by the Supreme Court, that is the use required of the buildings for exemption purposes.

It is further my opinion, assuming that a farmer, instead of platting a subdivision out of his own land, buys a lot in another platted subdivision located outside the city limits but within the master plan area, that the exempt status of his residence would depend upon whether there has been an effective offer of dedication and acceptance thereof. In the absence of a proper dedication, the land would retain its characteristics as agricultural and the home would be exempt from taxation. It is here observed that an offer of dedication must be made by the plat owner, which offer to effect a dedication must be accepted by the public. Thus, a municipality cannot effect a dedication and therefore change the classification of the land for taxation purposes without an offer of dedication of the plat by the owner thereof.

Question No. 2 is quoted as follows:

> In many cases, a city does not have a master plan that controls the development beyond the city limits. A person engaged only in farming may buy a small tract of land, one or two acres or less, outside of the city limits but contiguous thereto on which he builds a home for himself in which to live. He may own all his farm land or rent all of his farm land from others or own part of it and rent part of it from others; in each case all of the land farmed is several miles, as much as fifteen or twenty miles in some instances, from his home.
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> Is the home of this farmer exempt
>
> a. If the tract on which it is located is surrounded generally on the three sides not adjoining the city boundary by other similar small tracts on which other homes are located?
>
> b. If the tract is surrounded on the three sides not adjoining the city boundary by farm lands on which there are no nearby farm buildings or other buildings?"

With respect to your second question, it is my opinion that, if a farmer purchases a small tract of land located outside of the city limits of a city even though contiguous thereto, the land would retain its characteristics as agricultural land irrespective of whether the land is surrounded on the remaining three sides by smaller tracts on which homes are located or surrounded by farm lands on which there are no nearby farm buildings or other buildings. The exempt status of other buildings located on the other tracts would, of course, depend on their use as farm buildings:

Question No. 3 is quoted as follows:

> In several places throughout the state, townsites with the usual provisions for streets were platted many years ago and the plat filed in the office of the register of deeds but the town was never incorporated as a city or village. Many of these townsites still have people who own and live in

residences on the platted townsite area of the township; some of these owners of residences operate nonfarming businesses in the town, others are engaged only in the occupation of farming, and some of those who are engaged in the occupation of farming also own other buildings situated on other lots in the platted townsite, which buildings are used as a repair shop or granary, etc., in connection with the farming operation.

Among the questions arising under the farm improvement exemption provision in connection with such buildings situated on platted lots in an unincorporated townsite are:

a. Is a residence owned and occupied by one whose only occupation is farming exempt under this provision whether or not the lot on which his residence is situated actually adjoins the rural land that he farms?

b. If a building and the lot on which it is located are both owned by a farmer who uses the building only for storing grain raised by him or for a shop for storing or repairing his own farm machinery, is the building exempt under this exemption provisions?"

The answer to Question No. 3 is similar to the answer to Question No. 1; that is, the answer depends upon whether the plat as filed constituted an offer of dedication of the streets and alleys and whether this offer has been accepted by the public. If there has been an accepted dedication, then it is my opinion that the lots in question constitute urban property even though not situated in an incorporated city, and the buildings thereon as described in Question No. 3 would not be exempt from taxation. If, however, there has been no dedication or if the dedication has not been accepted then, of course, the buildings located on the lots as described would be classified as agricultural land and, as the buildings are occupied by a farmer and are used by him as farm buildings, the buildings and improvements would be exempt from taxation.

Question No. 4 is quoted as follows:

In many instances a farmer leases a part of a railroad right-of-way either within or outside the incorporated limits of a city and constructs on the railroad right-of-way a potato warehouse or granary in which only potatoes or grain raised by him are stored.

Attention is called to the fact that Chapter 416, S.L. 1967, repealed subsections 9, 10 and 11 of section 57-02-05, and added the substance of those subsections to section 57-02-04, thereby classifying elevators and other improvements on a railroad right-of-way from personal property to real estate for property tax assessment purposes.

The questions to be answered in connection with these facts are:

a. Is such a building located on railroad right-of-way either within or outside the city limits and used only

by the farmer in connection with his farming operations a structure or improvement that is located on 'agricultural lands' within the meaning of the exemption and, therefore, exempt?

b. If in the preceding question such a structure is taxable, would a part of it be exempt on a prorated basis if the structure was actually constructed partly on and partly off the railroad right-of-way and if the part off the right-of-way is on agricultural land?"

It is noted that the Court in the Eisenzimmer case concluded that the term "agricultural lands" as used in Subsection 15 of section 57-02-08 is descriptive of the land itself as a class, and is used to distinguish this class from urban or "other properties." In addition, the Court in the Eisenzimmer case concluded that, had the Legislature intended to exempt all buildings in connection with the operation of a farm, regardless of the type of property on which the buildings were situated, it would have omitted the restriction in that respect. The Court, therefore, concluded that not all rural land constitutes agricultural land, and consequently, it is my opinion that the property owned by a railroad and used primarily as a right-of-way by the railroad must be classified as "other properties" (commercial or industrial) and does not fall within the classification of agricultural lands. The building, therefore, described in Part a. of Question No. 4, because it is located on railroad right-of-way, would not qualify as a farm building situated on agricultural lands.

With respect to Part b. of Question No. 4, it is my opinion that that portion of the building which is in fact situated on agricultural land and used as a farm building or improvement would be exempt from taxation. In this connection, see Attorney General's opinion dated October 10, 1955, appearing on Pages 124-127 of the Report of the Attorney General for the period of July 1, 1954 to June 30, 1956. You will note that this opinion cites several cases dealing with pro-rata assessments on a portion of a building and, in addition, recognizes that the assessing officials in North Dakota have followed the holdings in those decisions.

Question No. 5 is quoted as follows:

> A farmer whose farm land and farm residence and other buildings are located several miles from a good highway purchases a two-acre tract near the highway on which he builds a home in which to live, in order to have easier access to town, school facilities, etc. He continues to farm his same farm land, all of which is separated from his new home by several miles. He has no other occupation. Although the circumstances here are quite similar to those in Question No. 2, it is desirable, because of specific inquiries, to have the following questions answered as separate questions:
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> a. Is the new home of this farmer exempt as a farm residence under the exemption statute ?
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> b. Would the answer to the preceding question be different

if the tract on which the new home was built was larger than five acres? See subsection 10 of section 57-02-01 and Attorney General's opinion of February 7, 1966, cited below.

c. If the farmer built a granary on the two-acre tract instead of a residence, and used it for storing the grain he produced from the farm lands several miles away, would the granary be exempt?"

The answer advanced to Question No. 2 would be equally applicable to Question No. 5. It would appear that if a farmer owns two tracts of land which are not contiguous, but which are used together, both tracts must be considered in determining what constitutes a farming unit. If the acreage of the two tracts making up the farming unit is in excess of five acres, it is my opinion that the statutory presumption as to acreage that is set out in Subsection 10 of section 57-02-01 would not be applicable. Therefore, under the factual situation set out in Question No. 5, the home and granary of the farmer would be exempt.

Question No. 6 is quoted as follows:

> There are many tracts of land located outside of the incorporated limits of a city on which structures are located that are used for raising hogs or fur-bearing animals or poultry. The size of the tract or the nature of the operation is such that very little, if any, of the feed required to raise the animals or poultry is raised or produced from farm land operated by the person who raises the animals or poultry for market. Most, if not all, of the necessary feed is purchased.
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> Does the use of the structures for such purposes constitute a use for farming, thereby entitling the structures to the exemption, or does such a use constitute a use in connection with a commercial or industrial enterprise and, therefore, subject them to assessment and taxation?"

Reference is here again made to the definition of the word "farm" for tax exemption purposes as used by the North Dakota Supreme Court in the Boehm and Fredrickson decisions. This definition requires that the land be rural and be devoted to agricultural purposes. The Court further stated that the term implies "the cultivation of the land under natural conditions for the purpose of production for use and aid thereof."

The question of whether the raising of hogs or poultry on small tracts of land, with no actual cultivation of the soil, with the operation being carried on through the use of purchased commercial feeds, constitutes farming, or whether the whole unit constitutes a farm, has not been judicially determined in this state. However, the Courts in other states have held that this type of operation does not constitute a farm and the person operating same is not a farmer. In this connection, see Chudnov vs. Board of Appeals of Town of Bloomfield, 154 A. 1621; O'Neil v. Pleasant Prairie Mutual Fire Insurance Co., 38 N.W. 345; Mattison v. Dunlap, 127 P.2d. 140; Town of Lincoln v. Murphy, 49 N.E.2d. 453; Town of Mount Pleasant v. Van

Tassel, 166 N.Y. Sup.2d. 458; and Whitpain TP v. Bodine, 94 A. 2d. 737.

It is my opinion that the term agricultural is broader than the term farm and, while it is generally recognized that the raising of livestock and poultry are kindred activities that are to be considered in determining whether particular activities constitute farming, the type of activity as set out in Question No. 6, when not carried on in connection with the tillage or pasturage of the soil, would not come within the meaning of the term "farm" as used by the North Dakota Supreme Court, as well as courts of other states. Consequently, the buildings used in the manner specified in Question No. 6 would not be used as a part of a farm plant or as a farm residence, and would not be exempt from taxation.

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