

**OPINION
68-420**

July 3, 1968 (OPINION)

Honorable Edwin Sjaastad

Tax Commissioner

RE: Taxation - Exemptions - Public Purpose

This is in response to your question whether or not part or all of a lot and a building on it and personal property in the building would be exempt from property taxes under the following situation, which is in the tentative planning stage.

It is proposed to construct a memorial center honoring the memory of a former United States president, to consist of a one-story building approximately 40x100 feet in size. The building would have a twofold purpose, (1) honoring the memory of the former president and (2) use of the building for an office headquarters for a political party. The memorial center would be open to the general public for visiting during reasonable hours without charge. The memorial would include collections of historical materials, books, momentos, and various items relating to the life of the former president during the period for which he held public office. In addition to the memorial center, space would be provided for a political headquarters, office equipment, etc. You then call our attention to Section 176 of the North Dakota Constitution and Subsection 8 and 11 of Section 57-02-08, as amended, of the North Dakota Century Code, and ask the following questions:

1. Would all, or any part, of the lot, building, and personal property in the building be exempt if ownership of all the property was in the political party organization and if no financial charges or payments of any kind were required of anyone with respect to the part of the property devoted to the memorial center? In this connection, Subsections 8 and 10 both apparently require ownership by an exempt organization whereas section 176 of the constitution does not require ownership but only an exclusive use for the exempt purpose.
2. If ownership by an exempt organization is required and if a political party is not regarded as an exempt organization, would all, or any part, of the property be exempt if it was owned by a nonprofit foundation whose primary purpose was the providing of the memorial center for the general public at no charge to the public and if -
 - a. one part of the building and furnishings were used only by the memorial center and the other part only by the political party with the political party paying a reasonable rental to the foundation for use of that part of the property occupied by it?
 - b. the same as 'a', immediately above, but with the

political party not being required to pay any rental or other charge for the use of that part of the property occupied by it?"

(Underscoring yours.)

Section 176 of the North Dakota Constitution provides, amongst other things, that the Legislature may by law exempt any and all classes of personal property from taxation. It specifically provides that:

"* * * The property of the United States and of the state, county and municipal corporations and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. * * *." (Emphasis supplied.)

This section, except for governmental ownership, seems to place emphasis on the "use" of the property in determining whether or not it comes within the exempt status.

The property in question and its use as a memorial center might qualify under the phrase, "other public purposes." "Public purpose" was defined in *Green v. Frazier*, 44 N.D. 395, 176 N.W. 11, and affirmed in 253 U.S. 233, 64 L.ed. 878, as follows:

"Public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division."

The courts have also said that memorials to inspire sentiment or patriotism or to respect the memory of worthy individuals constitute a "public purpose." In this respect World War II memorials were authorized by the Legislature.

On this basis it would appear that the building as a memorial center to commemorate various items relating to the life of a former president could come within the meaning of a "public purpose" and as such could qualify under Section 176 of the North Dakota Constitution. However, as to the use of a portion of said building or memorial center for other purposes, we encounter other legal questions, the examination of which raise serious doubts as to whether or not such use would invalidate the exemption.

The latest expression on the use of property can be found in *North Dakota Society for Crippled Children and Adults v. Louise Murphy*, 94 N.W.2d. 343, wherein the Supreme Court said that the use of a building or property must clearly come within the exemptions provided for by law. In this case the court held that although a corporation was a charitable institution the use of realty (home) solely for the purpose of providing its executive director with a residence at no cost to him did not justify an exemption of realty from taxation. It also reaffirmed the rule of law followed by North Dakota that the burden is upon the claimant to clearly bring himself within the exemption provisions and that the exemption statutes are to be strictly construed against the claimant.

It is not clear whether Section 176 of the North Dakota Constitution is self-executing or whether it requires specific legislation. In this respect we do note that said execution contains two separate provisos, one permitting the legislature to exempt all classes of personal property and the other exempting certain property. The legislature did, however, under Section 57-02-08 exempt various properties. The examination of the exemptions provided disclosed that the property used exclusively for schools, religious, cemeteries, charitable and other public purposes are specifically exempted. This raises a question whether or not a statutory provision is necessary before the property is exempt. It would indicate that the legislature thought it advisable or necessary to enumerate the properties which are exempt and the conditions under which they are exempt.

We have examined the various subsections under Section 57-02-08 and we do not believe that the property in question here comes specifically within any of the exemptions stated. We do not believe that a memorial as such is considered to be a charitable institution - not in the sense as said term has been employed throughout the Century Code and such would not come within the provisions of Subsection 8 of Section 57-02-08. The only section under which a memorial center might qualify is Subsection 11 of Section 57-02-08 which, as is material here, provides as follows:

1. Real and personal property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations, and associations, grand or subordinate, not organized for profit, and used by them for places of meeting and for conducting their business and ceremonies, and all real and personal property owned by any fraternity, sorority, or organization of college students if such property shall be used exclusively for such purposes; provided further that any portion of such premises not exclusively used for places of meeting and conducting the business and ceremonies of such organization shall be subject to taxation. * * *." further that any portion of such premises not exclusively used for places of meeting and conducting the business and ceremonies of such organization shall be subject to taxation. * * *."

In examining the various exemptions under Section 57-02-08, including Subsection 11, as amended, of the North Dakota Century Code, we find that the statutes require "ownership" as a necessary condition to come within the exemptions, whereas Section 176 of the North Dakota Constitution, except for governmental ownership, predicates exemptions upon the "use." By reading the constitutional provisions and the statutory exemptions together, we must necessarily recognize that both requirements must be met.

Subsection 11 quoted herein relates to certain types of organizations and associations. It would appear difficult to bring a memorial center under the classification of such organizations and associations, particularly in view of the action by the legislature in enumerating the various classes of organizations and associations under Section 57-02-08. The legislature having taken such action, we are inclined to believe that the rule, "the inclusion of some is the

exclusion of those not named", would come into operation. It is significant to note that Subsection 11 provides that if a portion of the premises is not exclusively used for places of meeting and conducting the business of the organization or association, such portion would be subject to taxation. It also provides that if food or alcoholic beverages are sold for profit the portion of the building in which this is done is no longer exempt. These provisions apply only to Subsection 11.

Following the rule of the North Dakota Supreme Court in 94 N.W.2d. 343 (Crippled Children's case) which was, in effect, a reaffirmation of a long-standing rule, we come to the conclusion that the memorial center does not specifically come within the statutory exemptions and may qualify only under the constitutional provision (176) pertaining to "public purposes."

If the property were used exclusively for a memorial purpose these questions would not arise and from the tenor of the cases and statutory provisions, the same would be exempt from taxation.

The manner in which the property of political parties or contributions to political parties are treated under the income tax laws clearly illustrates that for taxation purposes political parties are not considered in the same light as other activities which have a public purpose. We are also mindful that under social security acts certain organizations and associations are exempt, provided they do not engage in activities which would come within the general heading of "political activities."

The functions, activities and purposes of a political party do not fall into the same category as "public purpose." "Political purposes" and "public purposes" have in common alliteration but thereafter the relationship is different. A political party is merely a body of men associated for the purpose of furnishing and maintaining the prevalence of political principles or beliefs in the public policies of government. It can also be said that it is an organization seeking or exerting power in government or political affairs of the state, municipality, or the like; or that it is a voluntary organization for the purpose of furthering particular political or economic beliefs; or that it is an organization of electors believing in certain principles concerning governmental affairs and urging the adoption and execution of those principles through the election of their respective candidates at the polls.

The term "political party" embraces many organizations and associations. Even under its broad concept, socialism or communism can qualify as a "political party." Even a party which is opposed to our concept of government or has as its avowed purpose the overthrow of the United States government could still come within the term "political party."

On such basis we are compelled to conclude that the activities of a political party do not constitute activities relating to a memorial, nor can it be said that political parties constitute a public purpose as such term has been defined by the North Dakota Supreme Court and the United States Supreme Court.

While there may be doubt whether or not Section 176 of the North Dakota Constitution is self-executing in every respect, we do believe that the property which squarely comes within the constitutional provision may qualify. Such conclusion necessarily contemplates that the property must be used exclusively for a "public purpose." From this there can be no deviation because the constitutional provision does not permit a dual use (tax exempt and subject to tax), split use, or partial use. It requires exclusive use. The property in question must come fully within the exemption in its entirety and meet all of the conditions to qualify.

Thus in direct response to your questions, it is our opinion that if the ownership of the property were vested in a political party it is doubtful that such property would be exempt, because we have been unable to find any statutory exemptions which would exempt property belonging to a political party, and, on the basis that a political party per se does not meet the "public purpose" concept. This doubt arises because where the legislature has confirmed an exemption, ownership has been made a necessary criteria.

In answer to Question No. 2, it is our opinion that if the ownership of the memorial center were vested in an exempt organization the property, both real and personal, could qualify as exempt from taxation if the memorial center were used exclusively for commemorating the life of a former president of the United States, if no charge for admission or viewing any of the articles and items stored therein were made.

In response to Question No. 2.a. and 2.b., we have no statutory guide to follow where a building is used partly for an exempt status and partly a nonexempt activity. The only guideline we have is Subsection 57-02-08, as amended, of the North Dakota Century Code, wherein the legislature specifically provided that portions of a building which would otherwise be exempt be used for the sale of alcoholic beverages or food is no longer exempt under certain conditions. A serious question then arises that if a portion of the building which would be exempt is used for nonexempt purposes whether or not it loses its exempt status. It is significant to note that the legislature specifically provided that certain exempt activities lose a portion of the exemption if the activities engage in the sale of alcoholic beverages or food under certain conditions and that portion pertaining to the sale of alcoholic beverages or food loses its exempt status. We have no other statutory provision which permits a partial exemption.

This raises the further question, can the memorial center be divided into exempt activities and nonexempt activities and still retain its tax exempt status?

As to making a portion of the memorial center available to a political party as a headquarters on either for a rental fee or rent free basis, both instances can lead into serious tax problems. If a portion were made available rent free the center would, in fact, be contributing to a political party and as such could lose its exempt status under the federal rulings and possibly the state rulings, and might also be in violation of law (Sections 16-20-08 and 16-20-09). If a portion of the center were made available for a fee it would no

longer be used exclusively for public purposes and could not qualify under Section 176 of the North Dakota Constitution. In either event, the tax exempt status would be placed in jeopardy.

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