

OPINION
69-413

June 20, 1969 (OPINION)

Mr. Loren Stadig

Economist

North Dakota Economic Development Commission

RE: Taxation - Exemption for New Industries - Available to Lessor

This is in reply to your letter with regard to the utilization of the ad valorem tax exemptions to new industries granted under Senate Bill No. 39 of the 1969 Session of the North Dakota Legislative Assembly. Your letter indicates that the question concerns the construction of an industrial building by an individual to be leased to an industry. Your question is stated as: "Would the exemption be available to the lessor or would the industry using the plant only be eligible if they constructed their own facilities?"

The basic authority for the exemption is the first sentence of Section 3 of the Act which states:

Municipalities are hereby authorized and empowered, in their discretion, as limited hereafter, to grant, after negotiation with a potential project operator, partial or complete exemption from ad valorem taxation on all tangible property used in or necessary to the operation of a project for a period of five years from the date of commencement of project operations, which date shall be determined by the tax commissioner. * * *."

Thus the basic fact that will justify the granting of the exemption is the fact that the property is used in or necessary to the operation of a project, as that term is defined in the Act. We find no reference or qualification in the Act in any manner limiting the exemption to property owned by the operator. We would assume that in the usual instance the potential project operator would not negotiate for the tax exemption, unless he received an adequate concession in lowered rentals or other considerations from the individual receiving directly the benefit of the tax exemption. Likewise, we would assume that the city council, city commission or board of county commissioners and other official bodies having responsibilities in this field would not consider granting the tax exemption where it would not inure to the benefit of the potential project operator. We note that a negotiation procedure prior to obtaining of the tax exemption is specified in the Act, and that the city council, city commission and board of county commissioners are granted discretion both as to whether the exemption will be granted and as to how much of an exemption will be granted. In these circumstances we do not believe that we can read a qualification that the property upon which the tax exemption operates must be owned by the potential project operator, though obviously considering the expressed public purposes declared in the Act, the benefit of the tax exemption must inure at least indirectly to the project operator.

We hope the within and foregoing will give a sufficient guideline upon which the Act can be utilized to achieve the results specified in the declaration and finding of public purpose.

HELGI JOHANNESON

Attorney General