

**OPINION
69-439**

June 18, 1969 (OPINION)

Mr. Eugene A. Kruger

State's Attorney

Cass County

RE: Taxation - Municipal Industrial Development - Exempt Status of
 Leasehold Interest

This is in response to your letter of April 17, 1969, requesting an opinion regarding the tax exempt status of a leasehold interest held by a company under the Municipal Industrial Development Act.

Your inquiry relates to the following factual situation:

The Needham Packing Company, which is located near West Fargo, North Dakota, entered into a lease under the Municipal Industrial Development Act with the city of West Fargo on November 1, 1960. Pursuant to the Act, bonds were issued by the municipality at the time of the lease. At this time the Act did not provide for a tax exempt status for the project. However, the 1965 Legislature enacted section 40-57-17 which exempts the leasehold interest.

You further explained that the city of West Fargo redeemed all of the revenue bonds issued by it in connection with this project in November of 1968 and cancelled the lease with the Needham Packing Company. A new lease was entered into between the city of West Fargo and the Needham Packing Company on November 1, 1968, for the purpose of expanding the existing plant facilities. The city thereafter issued approximately \$400,000 of revenue bonds under the Municipal Industrial Development Act. The Needham Packing Company made application to the township assessor asserting a property tax exempt status of the leasehold property. You ask whether the leasehold is exempt from taxation.

Section 40-57-17 of the North Dakota Century Code classifies leaseholds granted by a municipality under the Municipal Industrial Development Act as personal property and exempts the leasehold interest from personal property taxation for a period of five years. This section is quoted as follows:

EXEMPTIONS FROM TAXATION. The leasehold granted by a municipality under this chapter is hereby classified as personal property and such leasehold and all other personal property used by the lessee in connection with the project and located on the premises of the leasehold shall be exempt from personal property taxation for a period of five years from the granting of such leasehold and execution of any instrument evidencing said grant. Further, that any corporate lessee under such a leasehold referred to shall be exempt from the payment of corporate income taxes on any corporate income

attributable to the business carried on by the lessee on such leasehold premises for a period of five years from the year in which the corporation, lessee commenced business operations on the leased premises, provided, however, that this section shall not have the effect of exempting such corporation lessee from filing an annual income tax return."

An examination of the entire Municipal Industrial Development Act discloses that the Act is not limited to projects that have been newly constructed but rather the Act is equally applicable and may be utilized in the "reconstruction, improvement, betterment, or extension of any project." This is evidenced by the repeated use of this phrase throughout the entire act. In addition, section 40-57-17 does not limit the tax exemption to newly constructed projects but rather classifies all leaseholds granted by a municipality under the Act as personal property and exempts the leasehold and other personal property used by the lessee with the project and located on the leasehold premises from personal property taxation for a five-year period. This five-year period commences from the granting of the leasehold.

Applying the above factual situation presented by you, it appears that, as the city has redeemed all of the bonds which it originally issued in connection with the first project, terminated the lease with the Needham Company, expended money in an extensive plant expansion, and thereafter issued new revenue bonds under the Act and entered into a new lease with the Needham Company, that the leasehold granted by the municipality under the Municipal Industrial Development Act does constitute a granting of a leasehold interest within the meaning of section 40-57-17 and, thus, the new leasehold interest would be entitled to a personal property tax exemption for a five-year period, which period would commence from the granting of the new leasehold interest by the city to the Needham Packing Company.

It is observed, however, that an existing leasehold could not be cancelled merely to obtain or renew a tax exemption that had expired under the Act in that the Act and the exemption granted thereunder are only available to "construct, reconstruct, improve, better, or extend" any project authorized by the Act.

This opinion is consistent with the opinion issued to Mr. Lloyd Omdahl on November 29, 1965, in which this office concluded that the tax exemption provision contained in the Act applies to a project leasehold that had been originally constructed with private funds prior to July 1, 1965, and thereafter purchased and expanded by the city under financing obtained pursuant to the provisions of the Municipal Industrial Development Act and thereafter leased to the original owner of the project.

HELGI JOHANNESON

Attorney General