OPINION
70-367

February 18, 1970 (OPINION)

Mr. Leslie R. Burgum
Assistant State's Attorney
Stutsman County

RE: Taxation - Agricultural Lands - Exemption

This is in response to your request for an opinion whether or not certain property is exempt from taxation under the circumstances set out hereinafter:

> A taxpayer living in the City of Montpelier, Stutsman County, owns a tract of land in the unplatted area of that city but within the boundaries of the corporation. (Hereinafter referred to as Parcel A.) On this tract is his dwelling house and a machine shed. This tract of land he desires to claim as exempt on the ground that it is used for agricultural purposes.
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> Adjacent to the above described tract, the party above mentioned owns three lots on which are located three or four granaries where he stores his grain, but these lots are platted and therefore presumably would not come within the exemption statute. Also, adjacent to this tract where the taxpayer lives is a tract of unplatted grazing land with a barn thereon, and said taxpayer pastures his dairy cows on this area and makes use of the barn as well. But this grazing land he rents from another party.
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> This claimant for the exemption farms three quarters of land six miles West of Montpelier from which, I assume, he gains most of his income. These three quarters are also rented.
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> Now the question we raise is this: Can said claimant with whom we are concerned claim as exempt the tract of land, unplatted, which he owns and on which are located his dwelling house and the machine shed where he stores his farm implements?"

The question presented requires an examination and interpretation of subsection 15 of section 57-02-08 of the North Dakota Century Code, which provides as follows:

> 15. 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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> * * *."

Initially the location of the property is of some importance and is one of the controlling factors in determining whether or not the

property may be exempt under subsection 15. As to the location, the North Dakota Supreme Court in Eisenzimmer v. Bell, 75 N.D. 733, 32 N.W.2d. 891, clearly indicated that the platting of land constitutes a statutory dedication of said land for urban or municipal purposes and such land having been entered in the class of urban land could no longer be classified as agricultural land. It does not necessarily follow that all unplatted land is agricultural land. The Court, in substance, held that once land was platted it could no longer be classified as agricultural land. It does not necessarily follow that all unplatted land is agricultural land. The use of the land determines whether or not same is agricultural or something else.

By construing the pertinent statutes and form the decisions in cases before the Supreme Court, it appears that there are two basic conjunctive requirements in the test whether or not the land is agricultural so as to make the improvements thereon exempt. These requirements are location and use. In addition to this, we have the size factor and income; however, they are only on a presumption and not absolute.

In the instant matter Parcel A is unplatted area. It thus meets the one basic requirement of location. The question, however, still remains - is the land or parcel used for agricultural purposes so as to qualify as agricultural land?

Before we examine the use to which this land is put, we first wish to examine subsection 10 of section 57-02-01 of the North Dakota Century Code to determine whether or not it has any significance in the instant matter. Subsection 10 provides as follows:

> 10. 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."

The statutory provision refers to a unit of land, but it does not require that the unit be together, that it be in one location or be a continuous inseparable piece of land, nor does it require that the land be owned by one individual. It implies the contrary as to ownership, because of the employment of the terms, "owner, lessee, or occupant." From the facts stated here, we do not believe that Subsection 10 has any application to the subject matter. We are assuming, in accordance with the presumption stated in your letter, that the individual owning Parcel A derives his major income from farming activities.

Subsection 15 of section 57-02-08 of the North Dakota Century Code basically provides that all farm structures and improvements located on agricultural lands shall be exempt. The term "farm" has been defined by Webster, as follows:

> Any tract of land whether consisting of one or more parcels devoted to agricultural purposes generally under the management of a tenant or the owner; any parcel or group of parcels of land cultivated as a unit." (Underscoring ours.)

Such definition was recognized by the Supreme Court in Frederickson v. Burleigh County, 139 N.W.2d. 250. In the same case the Court made reference to the Boehm v. Burleigh County case, 130 N.W.2d. 170, wherein it said, after quoting definitions from various authorities:

> "The definitions set forth above clearly demonstrate to us the ordinary meaning of the word. As ordinarily understood, we believe "farm," for tax-exemption purposes, may be defined 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* * *.'"

In the instant situation we would have no hesitation to conclude that the parcel in question constitutes a farm or farmland if the owner was the owner of the adjacent lots used for grazing and three quarters of land located about six miles from the city. Nevertheless, we are not convinced that either subsection 15 of section 57-02-08 or subsection 10 of section 57-02-01 require that the person must be the owner of all the land used for agricultural purposes in order to satisfy the requirements of either one of the above mentioned subsections.

Subsection 10 clearly indicates to the contrary land Subsection 15 makes no reference to ownership, but makes reference to the use made of such land. As indicated in Rice v. Board of County Commissioners of Benson County, 135 N.W.2d. 597, the use to which the unplatted land is put is a determining, if not controlling, factor as to whether or not such land is agricultural or urban.

In reviewing the authorities which have had similar questions under consideration, we are impressed with the absence of any discussion as to the ownership of the land. The prevailing criterion employed in making a determination whether or not property was exempt from taxation as agricultural lands was the use to which the property was put.

Briefly referring again to subsection 10 of section 57-02-01, it does not require the unit to be contiguous or an undivided parcel of land under one ownership, but implies, because of its specific language, "owner, lessee, or occupant", that it is the use rather than ownership which is determinative of the question whether or not it is farmland. From the statutory language we cannot support or urge a conclusion that, in order to provide an exemption to improvements on a farmstead, the farmer must own all of the land which he cultivates or uses, or that he must, in fact, own at least five acres of land.

The other tracts and parcels of land (three lots on which three or four granaries are located) are platted and consequently, under the Eisenzimmer v. Bell case, such lots would no longer qualify as an exemption. The other three quarters of land are not considered in the instant question. We are only concerned with the land which has been identified as Parcel A.

Parcel A is being used in connection with the other lands or tracts of land. All of the tracts of land have one common use, which is

agricultural. The only real conclusion we can reach is that Parcel A is used for agricultural purposes and, together with the land used for the same purposes, it exceeds five acres.

It is, therefore, our opinion that the improvements on Parcel A are exempt under the provisions of subsection 15 of section 57-02-08, In arriving at this conclusion, we are mindful that tax exemption statutes are to be strictly construed and that a person claiming the exemptions must clearly illustrate and prove that he comes within the exemption. In this instance the exemption is claimed for improvements. If the land itself is claimed to be exempt, we call your attention to section 57-02-14.

HELGI JOHANNESON

Attorney General