OPINION
71-391

February 19, 1971 (OPINION)

The Honorable Don Halcrow
Representative
North Dakota Legislative Assembly
State Capitol

RE: Taxation - Exemption - Farm Buildings

This is in response to your letter in which you ask whether or not Senate Bill 2045 excludes farm buildings from taxation as it now exists in the reprinted bill. You also call our attention to lines 26 through 33 on page 2 of the amended bill and ask if this is a proper classification.

As to farm buildings and improvements, we issued an opinion to Byron L. Dorgan dated February 12, 1971, wherein we concluded that the present bill does not specifically disturb the exemption for farm buildings and farm improvements. However, we note that there may be some confusion, and for this reason we recommend that on page 1 of the reprinted bill, line 18, after the comma, the following language should be inserted: "except as otherwise provided." It was our thought that by so amending the bill the uncertainty, if any, would be eliminated.

As to the classification of property in lines 26 through 33, for purposes of taxation, we would like to make the following observations: The North Dakota Supreme Court, in Souris River Telephone Mutual Aid Corporation v. State, 162 N.W.2d. 685, which appears to be the latest expression by the North Dakota Supreme Court on matters relating to classification of property for taxation, on page 688 observed that the current provisions of Section 176 of the North Dakota Constitution as amended in 1914 changed the state's method of taxation from one of uniform rule upon property according to its true value to one of legislative discretion to classify subjects, including property and persons for tax purposes. The court went on to say that this legislative authority is subject only to the limitations prohibited by the Fourteenth Amendment of the United States Constitution which precludes arbitrary classification.

To our knowledge, the courts have not been required to rule on the specific matter contained in this bill, but in some other cases some sense of direction has been established. The North Dakota Supreme Court in State v. Gamble Skogmo, 144 N.W.2d. 749, among other things held that a statutory discrimination will not be set aside if any state of facts may reasonably be conceived to justify it. The same court in the same case also said that only invidious discrimination is prohibited by the Fourteenth Amendment to the United States Constitution.

The general thought which prevails throughout the various cases in which similar subjects were discussed is that there must be some basis for the classification and it also appears that the basis of classification need not be deducible from the nature of things

classified.

In addition to this, it has been held that the Legislature is not required to state the grounds for the classification. The courts have given a presumption of validity to the classifications and the burden has always rested upon the challenger to establish that the classification was unreasonable. However, where the classification is unreasonable, discriminatory, or arbitrary, the statutes have been held invalid. Reasonableness generally is based upon a just and rational basis, rule or distinction and is not to be based upon an arbitrary, oppressive, hostile, capricious, illusory or fanciful basis.

The courts have also said that the authority to classify includes the authority to subclassify.

Abstractly, we cannot say as a matter of law that there is no distinction between machinery and equipment used for processing oil and gas extracted from the earth and processing sugar beets from machinery and equipment used for other purposes. We would recognize that there could be a distinction, but whether this distinction will be sufficient to justify a separate classification can only be determined by examining the particular processes involved.

No facts have been submitted setting forth the manner in which sugar beets are processed and how other agricultural products such as potatoes, etc., are processed upon which a legal evaluation can be made as to a legal difference. We have only limited knowledge on the subject matter, but such knowledge suggests that the classification made may have difficulty withstanding a judicial test depending on the factual situation, even though the statute has the presumption of validity. There is the further legal question which would rest on given facts - can such processing plants be almost identical or is it impossible to use similar processing machinery.

In the final analysis it would be primarily a fact question.

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Attorney General