

**OPINION
71-399**

April 6, 1971 (OPINION)

Mr. Rodney S. Webb

State's Attorney

Walsh County

RE: Taxation - Exemption - Potato Warehouses

This is in response to your request for an opinion as to the taxability of potato warehouses which are owned by more than one person or which may be used for manufacturing or commercial operations. You further state that it is your general understanding that potato storage facilities located on individual farmers' premises are probably exempt from taxation. However, you are now running into many variations of ownership and usage. Basically, the exemption, if any, rests upon the provisions of Section 57-02-08(15) which provides as follows:

"PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

* * *

5. 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;

* * *

It is noted for property to be exempt, it must satisfy two conditions or requirements. Firstly, the property must be located on agricultural lands and secondly it must be used as part of the farm plant or as a farm residence. It is not sufficient that the property be merely located on agricultural lands, but is also necessary that the improvements be used as part of the farm operation.

The North Dakota Supreme Court in Fredrickson v. Burleigh County, 139 N.W.2d. 250 and in Boehm v. Burleigh County, 130 N.W.2d. 170, said in effect that improvements devoted to agricultural purposes if located on agricultural lands were exempt. Likewise, in Rice v. Board of County Commissioners of Benson County, 135 N.W.2d. 597, the North Dakota Supreme Court said that the use to which such lands are put should be the determinant of the classification. It also reiterated that farm buildings located upon agricultural lands used for agricultural purposes were exempt.

The provisions of Section 15 specifically exclude industrial plants or structures of any kind that are not used as part of the plant from

the exemption.

On this basis, we would have to conclude that the answer to your question is dependent upon the use made of the warehouses. Warehouses used to store potatoes would appear to be used for or devoted to agricultural purposes if the building is located on agricultural lands. If the building or warehouses are located on agricultural lands but are used for purposes of manufacturing products or for commercial operations, such warehouses would not be tax-exempt even though same may be located upon agricultural lands.

Ownership is not a criteria under subsection 15 to determine whether or not the improvements are exempt. Thus, it would make little difference if the warehouses were owned by more than one farmer or by farmers and nonfarmers. Basically, under subsection 15 it is the location and use which determine the status of properties for tax-exemption purposes.

The answers here are given in an abstract situation. Each situation, however, must rest on its own merits. If facts so indicate, subsection 10 of Section 57-02-01 would have to be satisfied.

HELGI JOHANNESON

Attorney General