

**OPINION
72-392**

June 15, 1972 (OPINION)

Mr. C. E. Crane

State's Attorney

Hettinger County

RE: Taxation - Exemption - Housing Corporations

This is in response to your request for an opinion whether or not the real estate owned by the Mott Rural Rental Housing Corporation is taxable or exempt from real property assessments and taxation.

To aid us in arriving at a conclusion, you have provided us with a copy of the Articles of Incorporation, a financial statement for December 31, 1971, and a copy of what appears to be the policy as to the rent charged for occupants.

The Articles of Incorporation disclose that the Mott Rural Housing Corporation was organized as a nonprofit corporation under Chapter 10-24 and is existing and operating pursuant to said articles.

The financial statement indicates that the housing corporation during the calendar year of 1971 had a net loss of \$860.88.

The rental rate varied depending on the age and income of the person, but vacancies could be filled by any persons by paying a higher rental.

We would further note that if the taxes were abated or if the corporation were given a tax-exempt status, the financial statement would show a profit. This, however, is not controlling.

Section 176 of the North Dakota Constitution is the basic provision pertaining to exemption of property from taxation and assessment. As is material here, it provides as follows:

* * *The* * *property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.* * *

It should be noted that this provision requires that the property be used exclusively for charitable or other public purposes.

Section 57-02-08(8) actually implements the constitutional provision. It provides as follows:

8. All buildings and contents thereof belonging to institutions of public charity, including public hospitals under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, and all moneys and

credits appropriated solely to sustaining and belonging exclusively to such institutions;"

The foregoing constitutional and statutory provision has been construed and interpreted by the North Dakota Supreme Court in the case of Young Men's Christian Association of North Dakota State University, a nonprofit corporation, v. Board of County Commissioners, et al., Civil Number 8800, on May 31, 1972. In this case the Court held that the burden of establishing that certain property comes within the tax exemption provisions, is upon the one who claims the exemption. It also reiterated what has been said in many other cases, that the exemption statutes must be strictly construed, but this does not prevent a liberal construction to carry out the express intention of the Legislature.

Significantly, the Court held that mere ownership of property by a charitable institution does not of itself exempt the property from taxation. The property must be devoted to charitable purposes and must actually be used in carrying out the charitable purposes of the institution claiming exemption.

The Mott Rural Rental Housing Corporation, a nonprofit corporation, does use the property for rental and charges a fee. The fact that a lower rental fee is established for certain age brackets with a limited income and a higher fee for those who are not in the age bracket with a limited income, is indicative of not using the property for charitable purposes.

We do not believe that the North Dakota Legislature ever intended the constitutional or statutory provision to be construed so as to permit the forming of a nonprofit corporation and allow such corporation to charge a low rental fee and then permit it to escape taxation.

In applying the rationale of the YMCA case mentioned above, it is our opinion that the Mott Rural Rental Housing Corporation and its rental property is not exempt from assessment and taxation.

We are aware that earlier expressions by this office did not have the benefit of the YMCA case recently decided and, consequently, may or may not be in harmony with the latest expression by the North Dakota Supreme Court. We would further observe that the facts on each case would have to rest on its own merits by taking into account the recent rules announced by the Court.

HELGI JOHANNESON

Attorney General