

**OPINION**  
**72-500**

August 22, 1972           (OPINION)

Mr. Theodore Kessel Jr.  
City Attorney  
19 First Avenue North  
LaMoure, ND 58458

Dear Mr. Kessel:

This is in reply to your letter of July 14, 1972, requesting an opinion interpreting the tax exemption provision of Section 40-57-17 of the North Dakota Century Code as they relate to Colonial Manors Corporation of Sioux City, Iowa.

The facts are quoted from the first and second paragraphs of your letter as follows:

\* \* \* \*The construction of the above entitled nursing home was just recently completed and was established by sale of revenue bonds under Chapter 47-57 titled Municipal Industrial Development Act of 1955. The City of LaMoure is the record title owner of the nursing home and by lease dated April 1, 1971 and recorded June 4, 1971 in the office of the Register of Deeds, LaMoure County, North Dakota, the nursing home is being leased to Colonial Manors Corporation of Sioux City, Iowa.

\* \* \* \*The project lessee did not make application for the exemption from the personal property tax within thirty (30) days from the granting of the leasehold.\* \* \*

You also advise that "business operations were commenced about three (3) weeks ago" by the project lessee, Colonial Manors Corporation.

You note that Section 40-57-17 provides that a leasehold is classified as personal property for a five-year period from the granting of the leasehold and upon application by the project lessee the leasehold premises shall be exempt for such period from personal property taxes; additionally, we note that this provision also refers to approval by the governing board of the municipality of the application. You state that since the North Dakota Legislature has abolished the personal property tax it is your opinion that "irrespective of filing of an application, there can be no personal property tax assessed against these leased premises. Further, since the leasehold is classified as personal property, there can be no real property tax levied against these premises until such five (5) year period has run."

You also state:

"With respect to the question of income tax referred to in the same section, the language seems quite clear that if the corporate lessee, namely Colonial Manors Corporation makes application within sixty (60) days from the date of commencement of operation to the State Tax Commissioner for

exemption from corporate income taxes, said corporation shall be exempt therefrom for a period of five (5) years from the date on which the corporate lessee commenced business operations, subject however to the filing of an annual income tax return."

You ask the following:

"Will you kindly render me an opinion as City Attorney stating whether my understanding as set forth above is correct and if not in what respects it is incorrect."

As to the income tax exemption provision in Section 40-57-17, we agree that the project lessee has sixty days from the date of commencement of operations within which to make application to the State Tax Commissioner for exemption from corporate income taxes for the five year exemption period provided in that section, subject however to the provision that the corporation lessee is not thereby exempted from filing an annual income tax return with the State Tax Commissioner.

As to the personal property tax exemption provided for in Section 40-57-17, it is necessary to examine the various statutory provisions from 1965 to date. The pertinent provision of said section in 1965 provided as follows:

"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.\* \* \*"

This section was amended by Chapter 384 of the 1969 Session Laws and as is pertinent to the question at hand, provided as follows:

"The leasehold granted by a municipality under this chapter is hereby classified as personal property. Upon application by the project lessee to the governing body of the municipality, and approval, the 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 the leasehold and execution of any instrument evidencing that grant.\* \* \*"

The same section was amended by Chapter 423 of the 1971 Session Laws to provide as follows:

"The leasehold granted by a municipality under this chapter is hereby classified as personal property for a period of five years from the granting of such leasehold and the execution of any instrument evidencing said grant. Upon application by the project lessee to the governing body of the municipality and approval the 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 such five-year period.\* \* \*

The 1971 version is the latest expression by the Legislature.

We must also observe that personal property exemption came into being as a result of the enactment of Chapter 528 of the 1969 Session Laws which provides as follows:

25. All personal property not required by section 179 of the Constitution of North Dakota to be assessed by the state board of equalization shall become exempt from assessment and taxation in the year 1970 and such property shall not be assessed or taxed for that year or for any year thereafter; provided that this provision shall not apply to any property that is either subjected to a tax which is imposed in lieu of ad valorem taxes or to any particular kind or class of personal property, including mobile homes or house trailers, that is subjected to a tax imposed pursuant to any other provision of law except as specifically provided in this Act. In addition, this Act shall not exempt from taxation the personal property of any corporation organized pursuant to the North Dakota Nonprofit Corporation Act, which is not exempt from personal property taxation under any other statute nor shall it exempt from assessment and taxation fixtures, buildings, and improvements upon land which are now assessed as real estate. Provided, however, that the provisions of this section of this Act shall not become effective if for any reason any other provision of this Act does not become effective, nor shall the provisions of this section continue in effect if this Act does become effective and any part of it is invalidated or disapproved in any way, other than by action of the legislative assembly, that would cause it to become ineffective."

The provisions of Section 40-57-17 were in effect prior to the exemption of personal property from taxation. As such, the initial language employed by Section 40-57-17 contemplated and necessitated an application and approval. However, with the elimination of the personal property tax, such application was no longer required.

We would further note that the latest expression by the Legislature merely classifies the leasehold as personal property for a period of five years. This evidences the fact that the Legislature was aware of the exemption heretofore granted for personal property, and then merely classified the subject property as personal for a period of five years. It appears that by classifying the property as personal, it would be automatically exempt and the further limitation of the classification for only a five-year period seems to support the proposition that the property is to be exempt automatically, but only for a period of five years.

While it may be argued that the 1969 provision made the exemption available only upon an application receiving favorable approval, it also appears that the 1969 Legislature did not anticipate the act which exempted personal property from taxation to be enacted and

consequently the exemption at that time was couched in language which required an application and approval. This suggests that the second sentence of Section 40-57-17 was continued without realizing it is not needed. Possibly it was retained for informative purposes for the assessor. However, the subsequent act by the Legislature in effect granted the exemption automatically.

We cannot ignore the clear import of the first sentence of Section 40-57-17 as it now exists. The leasehold is classified as personal property for a period of of five years with no conditions attached. Also, the last sentence of Section 40-57-17 indicates the exemption is by statute rather than approval by governing body.

It is therefore our opinion that the leasehold having been declared to be personal property for a period of five years, same is exempt for a like period of time from ad valorem taxes as a result of subsection 25 of Section 57-02-08 which exempts personal property from an ad valorem tax. As long as subsection 25 of Section 57-02-08 remains substantially as it now exists, the second sentence of Section 40-57-17 is deemed redundant.

I trust this answers your inquiry.

Sincerely yours,

HELGI JOHANNESON

Attorney General