

**OPINION
73-557**

July 27, 1973 (OPINION)

Mr. Michel W. Stefonowicz
Divide County State's Attorney
P.O. Box 130
Crosby, ND 58730

Dear Mr. Stefonowicz:

This is in answer to your letter of July 3, 1973, requesting our opinion on the questions of whether privately owned airplane hangars located upon city real property are subject to taxation as real property and, if so, "what provision of the North Dakota Century Code would be used to enforce the real property taxation."

For the reasons set out in the following paragraphs, it is our opinion that these privately owned airplane hangars, together with the value to the airplane hangar owners of their right to use the city owned site on which the hangars are located, are subject to taxation as real property and that collection of real property taxes levied thereon is enforceable pursuant to Section 57-24-31.

You note that city owned real estate is exempt pursuant to Section 57-02-08 of the North Dakota Century Code, subsection 3, from taxation. It is, of course, also exempt pursuant to the self-executing exemption provisions of Section 176 of the North Dakota Constitution.

The fact, however, that real property owned by a city or other government unit is exempt from taxation does not thereby exempt the rights or privileges that a private person may have in that real property.

Section 57-02-03 of the North Dakota Century Code provides, in effect, that all property in the state is subject to taxation "except as otherwise expressly provided." Section 57-02-04 defines real property, for purposes of taxation, as including, in subsection 1, "the land itself" and, among other things, "all rights and privileges thereto belonging or in anywise appertaining", and, in subsection 2, as including "All structures and buildings. . .".

In *Ottertail Power Company v. Degnan* (1934), 64 N.D. 413, 252 N.W. 619, the North Dakota Supreme Court held that Ottertail Power Company was taxable on the value of its interest (which the Court described as a leasehold interest) in a building and site owned by the City of Devils Lake. The case does not indicate that there was a lease instrument executed by the City and Ottertail; instead, the City by ordinance granted to Ottertail the "right and privilege to use the brick building belonging to the said City of Devils Lake and situated upon Lots Twenty-two, Twenty-three, and Twenty-four of Block Nineteen--together with its appurtenances, and so much of the said premises as may be reasonably needed for its convenient use during a term. . ." specified in the ordinance, and without any reservation of rent by the City but obligating Ottertail to keep the premises

insured and in repair and to pay any taxes, special assessments and other charges assessed or levied on the premises.

In *Lower Yellowstone Irrigation District v. Nelson* (1941), 71 N.D. 439, 2 N.W. 180, the Supreme Court held that the interest of a desert land entryman under a United States homestead act and a reclamation act in land to which the United States held both the legal and equitable title was subject to assessment and taxation as real property.

In the *Ottertail* case the building and the site on which it was located were both owned by the City of Devils Lake. In your letter you state that the site is owned by a city but that the airplane hangars located thereon are privately owned. The fact that the hangars are not owned by the city does not prevent them from being classified as real property for taxation purposes; subsection 2 of Section 57-02-04 does so classify them. See 84 C.J.S., Taxation, Sections 67 and 72.

Aside from the taxation provisions of the law but consistent herewith, the hangars are also real property under the definitions of real property under the definitions of real property in Sections 47-01-03 and 47-01-05, although as between the parties (the city and the hangar owners) the hangars would be "in effect constructively severed from the realty for purposes of adjusting the rights of the parties" if those rights were in dispute--see *Warner v. Intlehouse* 60 N.D. 542 at 547, 235 N.W. 638 at 640.

While your letter does not indicate the nature of the agreement or arrangement between the city and each hangar owner as to the city owned site on which the hangar is located, it is, of course, evident that the owner of each hangar has either a leasehold or some other possessory interest or right or privilege in the site. That interest or right or privilege is real property under subsection 1 of Section 57-02-04 and, since there is no provision in the law expressly exempting it (see 57-02-03), it is subject to taxation as real property along with the hangar located on it.

As already stated, the collection of real estate taxes levied on a private person's interest in government owned real property can be enforced pursuant to Section 57-24-31, which is as follows:

"57-24-31. COLLECTION OF REAL ESTATE TAXES ON LEASEHOLD OR OTHER POSSESSORY INTERESTS. If any holder of a leasehold or other possessory interest in exempt real property neglects or refuses to pay any real estate taxes legally assessed and levied thereon at such time as now is or may hereafter be required by law for the payment of real property taxes, such leasehold or other possessory interest shall be sold in the manner provided by law for the sale of real property for delinquent taxes. Such taxes shall also constitute a personal charge against the holder of the lease or other possessory interest from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes shall be applicable."

Under this statute if the taxes levied on the particular possessory

interest that was assessed are not paid, collection is enforceable, by sale of the interest assessed, pursuant to the provisions of Chapter 57-24 of the North Dakota Century Code in the same way that any other real property may be sold for unpaid real estate taxes levied on it. In addition, those taxes are a personal charge against the holder of the possessory interest and, if not paid, collection can be enforced in any of the various ways provided in Chapter 57-22 of the North Dakota Century Code for the collection of delinquent personal property taxes. In order to support valid collection procedures under either of these two methods, the particular real property interest in the exempt real property should be sufficiently described in the real property assessment books so that it can be determined what property interest was assessed. In this connection see Section 56-02-34, the annotations to Section 57-24-29, and Section 57-45-14. Also see 84 C.J.S., Taxation, Section 411b.

In addition to the North Dakota Supreme Court decisions cited earlier in this opinion and the cases and authorities cited by the Supreme Court, more recent decisions of courts in other states relating to assessment and taxation of leasehold or other possessory interests in state or local government owned real property are also of interest. See, for instance, such cases as *Texas Company v. County of Los Angeles* (Cal. 1959), 338 P. 2d. 440; *Clark-Kunzl Company v. Williams* (Wash. 1970), 469 P. 2d. 874; and *Pier 67, Incorporated v. King County* (Wash. 1970), 469 P. 2d. 902.

Yours very truly,

ALLEN I. OLSON

Attorney General