

LETTER OPINION
73-570

January 18, 1973 (OPINION)

Mr. Dale W. Moench
City Attorney
P. O. Box 1157
Dickinson, ND 58601

Dear Mr. Moench:

This is in response to your letter in which you state the following:

"The Dickinson City Commission has requested that I write for an opinion regarding Section 40-57.1-06, as amended, of the North Dakota Century Code.

"The problem involves a local manufacturing firm which received a property tax exemption and income tax exemption on February 10, 1970. This property tax exemption and income tax exemption were for a period of five years. Recently, this manufacturing firm started work on an expansion, which will be completed this spring. Such expansion will make the market value of the exempted property exceed the original exempted valuation by more than ten percent. The local manufacturing firm has made reapplication to the city of Dickinson in order to receive an exemption on the added value of such property."

After expressing some of your thoughts on the subject matter, you ask for an opinion on the following questions:

1. Can a reapplication be made by such local manufacturing firm to receive an exemption on the added value of such property?
2. If a reapplication for an exemption on the added value of such property is granted, what maximum period is allowable for the exemption on the added value (addition) of such property only?

The answers to the questions must be found in the statutory provisions and matters which were considered by the Legislature and made part of the record. We have examined the report of the North Dakota Legislative Council for the Forty-second Legislative Assembly in which Senate Bill 2051 (which became Chapter 427 of the 1971 Session Laws) was reported. The discussion therein did not cover the questions at hand. Chapter 427 amended Section 40-57.1-06. The material portion of this section now provides: "If at any time the value of the property exempted from taxation under the provisions of this chapter exceeds the original valuation by more than ten percent, the project operator must reapply in order to receive an exemption on the added value of such property." It continues by providing that if no reapplication is made, the property will be subject to taxation. The ultimate question is that if an application is made in instances where the valuation was increased by more than 10 percent and is

granted whether the exemption would be for a new period of five years or for the remainder of the five-year period assuming an exemption had been granted before.

The discussion in the report of the North Dakota Legislative Council does not shed any light on this question.

We must examine the other provisions of Chapter 40-57.1 and in so doing we find that in Section 40-57.1-03 the exemption is limited to "a period not exceeding five years from the date of commencement of the project operations, which date shall be determined by the tax commissioner." This section imposes a limitation as well as a time period when the five-year exemption begins to run. The Legislature apparently was concerned with the date in which the five-year period commences to run because it also directed the tax commissioner to determine the date when the five-year period begins to run with reference to the "date of commencement of project operations". We must assume that the Legislature was primarily concerned with fixing a definite time and realizing that the commencement of a project could involve the interpretation of a number of facts and therefore imposed the duty upon the tax commissioner to determine such date for tax exemption purposes.

The five-year exemption limitation and the fixing and determining of the date when the five-year period begins to run must be given considerable weight in construing the other statutory provisions.

Under Section 40-57.1-06 we find no language which specifically or by implication suggests that the increase of property valuation in excess of 10 percent would be entitled to a separate new five-year exemption.

Thus, under the provisions of Section 40-57.1-03 which sets a date when the five-year period commences to run and also limits the exemption to the five-year period, the new provisions in Section 40-57.1-06 authorizing a reapplication must be construed to conform to the basic limitations and dates when the period of limitations begin to run.

The Legislature could very easily have provided that the new valuation in excess of 10 percent of the original project should be entitled to a separate five-year exemption. This, however, it did not do.

The courts have consistently held that exemptions must be construed strictly and those seeking the exemption must bring themselves fully within the provisions to enjoy the exemption.

The laws under which a tax exemption is claimed receive a strict construction against the claimant. See *North Dakota Society for Crippled Children and Adults v. Murphy*, 94 N.W.2d. 343 and *Lutheran Campus Council v. Commissioners of Ward County*, 174 N.W.2d 362. The North Dakota Supreme Court has also said that while statutory provisions exempting property from taxation must be strictly construed, and that the exemption must be clearly granted, it does not mean that a liberal construction should not be given to tax exemption statutes in order to carry out the express intention of the

Legislature. See YMCA of North Dakota State University v. Board of County Commissioners, 198 N.W.2d. 241 and Lutheran Camp Council v. Board of Commissioners of Ward County, 174 N.W.2d. 362. Applying the foregoing rules of law to the provisions of Section 40-57.1-06 which must be read in conjunction with Section 40-57.1-03, it appears that the initial five-year period which commences from the date that the project begins operations as determined by the tax commissioner is the maximum time for which an exemption may be granted, and an additional or separate extension of five years for the added value in excess of 10 percent would amount to a construction of the statute which is not authorized. The granting of a separate new five-year period which naturally would extend beyond the initial five-year period would be in violation of Section 40-57.1-03.

Thus, in direct response to question number 1, it is our opinion that under the language of Section 40-57.1-06 a reapplication can be made if the added value to the property exceeds the exempted portion of the property by 10 percent.

In response to your second question, it is our opinion that the exemption as granted to the added value of the property would be for the remainder of the five-year period which began to run with the granting of the exemption in the first instance. The additional value of the property in excess of 10 percent would not be entitled to a separate five-year exemption.

Sincerely yours,

ALLEN I. OLSON

Attorney General