

**OPINION
74-510**

May 28, 1974 (OPINION)

Mr. John A. Zuger
City Attorney
P. O. Box 1695
Bismarck, ND 58501

Dear Mr. Zuger:

This is in answer to your letter of April 11, 1974, requesting my opinion on the question of how a 47.55 acre tract of hayland annexed by the City of Bismarck should be assessed for property tax purposes because of the 1973 amendment to section 57-02-27, North Dakota Century Code, which added the following language to that section:

"Agricultural lands within the corporate limits of a city, whether or not platted, shall constitute agricultural property and be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Such valuation shall be uniform with the assessed value of adjoining unannexed agricultural land."

The following three paragraphs are quoted from your letter:

"At the Board of Equalization meeting, a taxpayer appeared in connection with the assessment of a tract containing 47.55 acres of land. The land before annexation and after annexation is hayland. The landowner petitioned and asked for annexation to the City of Bismarck and the property was annexed and the description was by metes and bounds.

"Under our City Ordinances, all property comes into the City with an automatic zoning of R-7 or single family residential use. The City also has a zoning classification for agricultural land which on petition of the landowner could be rezoned to continue the agricultural use.

* * *

"The question that we have is whether or not the property in this case should be continued to be assessed on the basis of an agricultural use or on the basis of a residential use and would the residential zoning change its valuation? Would the lands be in any different situation than any other vacant residential property in the City of Bismarck that has not been improved or used but which can be used only for a residential use?"

Chapter 337, Session Laws 1973, which amended section 57-02-27 also amended sections 40-51.2-06, 40-51.2-07(3) and 40-51.2-16 of the city annexation law. These four statutory provisions as amended are as follows: (the underlined language is the new language added by the 1973 Act and the language preceded and followed by triple parentheses is the language that was removed by the 1973 amendment from the existing provisions of law):

"40-51.2-06. PETITION OF OWNERS AND ELECTORS - ANNEXATION OR EXCLUSION - CLASSIFICATION OF ANNEXED AGRICULTURAL LANDS FOR TAX PURPOSES. If the governing body determines to annex said area it shall do so by ordinance, a copy of which with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds, whereupon annexation shall then be effective. Annexation shall be effective for the purpose of general taxation on and after the first day of April next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in case of annexation."

"40-51.2-07. ANNEXATION BY RESOLUTION OF MUNICIPAL CORPORATION. The governing body of any municipality may adopt a resolution to annex contiguous or adjacent territory as follows:

* * *

3. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution shall be included within and shall become a part of the city, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds, whereupon annexation shall become effective. Annexation shall be effective for the purpose of general taxation on and after the first day of April next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use."

"40-51.2-16. EFFECTIVE DATE OF ANNEXATION BY ANNEXATION REVIEW COMMISSION - CLASSIFICATION OF ANNEXED AGRICULTURAL LANDS FOR TAX PURPOSES. Territory annexed to a municipality under the provisions of this chapter relating to petition to annexation review commission shall be annexed as the date of the order of the commission, except for tax purposes, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds. Annexation shall be effective for the purpose of general taxation on and after the first day of April next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for ((purpose)) purposes all lands in the annexed area which were classified as agricultural lands are ((subdivided, or)) put to another use."

It is noted that subdividing land per se under present statute is not a basis for changing classification.

"57-02-27. PROPERTY TO BE ASSESSED AT FULL VALUE - LIMITATION ON ASSESSMENT OF ANNEXED AGRICULTURAL LANDS. All property subject to taxation based on the value thereof shall be assessed at its true and full value in money. In determining the true and full value of real and personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price at which said property would sell at auction, or at forced sale, or in the aggregate with all the property in the town or district, but he shall value each article or description by itself, and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract, or lot of real property, there shall be determined the value of the land, exclusive of improvements, and the value of all taxable improvements and structures thereon, and the aggregate value of the property, including all taxable structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell for at a fair voluntary sale for cash. Agricultural lands within the corporate limits of a city, whether or not platted, shall constitute agricultural property and be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Such valuation shall be uniform with the assessed value of adjoining unannexed agricultural land."

In view of the above quoted statutes, as amended by the 1973 legislature, we must conclude that the property described in your letter should continue to be assessed on the basis of an agricultural use until such lands are put to another use. It is obvious that the legislature intended such a result and enacted such provisions to, in part, blunt the protests which are raised when agricultural lands are annexed to a city. That such objections do exist is evidenced by the fact the legislature found it necessary to enact chapter 40-50.1 of the North Dakota Century Code, determined by the North Dakota Supreme Court to be unconstitutional in *Carrington v. Foster County*, 166 N.W.2d. 377 (N.D. 1969) for the reason that it placed legislative duties on the district court, and the subsequent enactment of chapter 40-51.2 providing for an annexation review commission composed of persons other than district judges. The sections of chapter 40-51.2 do contain provisions similar to that of section 57-02-27 of the North Dakota Century Code, and such provision were, as noted above, enacted in the same legislative bill.

While the city is, as you note, required to assess all property in a uniform manner, in effect it appears to us that the legislature has established the manner in which such property is to be assessed, i. e., according to the assessed value of adjoining unannexed agricultural land. Since the legislature has the authority to determine the manner and method of annexation of property to a city, it further appears these provisions are in the nature of a condition

of annexation and are binding upon the city. The legislature has not taken such action with respect to "other vacant residential property" which might be located within the city that has not been improved or used but which can be used only for a residential use. However, the distinction might well be that this property was not included within the city limits under the provisions of the current annexation statute.

These lands may well not be "agricultural" lands within the meaning of the above quoted statutes. Insofar as uniformity of assessment is concerned, section 176 of the North Dakota Constitution provides taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. In this respect we must conclude the legislature classified agricultural lands in areas annexed to a city which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use as a class. The legislative authority to classify various subjects for tax purposes is subject only to the limitation that such classification must not be arbitrary. See *Signal Oil and Gas Company v. Williams County*, 206 N.W.2d. 75 (N.D. 1973).

You also ask "if the assessor does value agricultural land within the city to reflect its value for agricultural purposes rather than its market value if it is offered for sale of the free market, is this equivalent to granting a partial exemption?"

Your question presupposes certain facts not before us, not the least of which is that the land would be assessed at a higher rate at agricultural value than it would for city value. While we may speculate this to be the case, it is not a proven fact and it appears to involve a matter which is really not before us, i. e., the matter of equalization of assessments, etc.

In summary, it is our conclusion that lands having a classification of agricultural and at the time of annexation to the city retains such classification for ad valorem property tax purposes until they are put to another use and the valuation of such land shall be uniform with the assessed valuation of adjoining unannexed agricultural land in the vicinity of or adjoining the city. Since the property in question was used for hayland before and after annexation, it appears it clearly falls within the purview of the statute. The definition of agricultural lands as given in *Rice v. Benson County*, 135 N.W. 597, would be of assistance in determining what constitutes agricultural land.

Sincerely yours,

Allen I. Olson

Attorney General