OPINION
74-537

April 19, 1974 (OPINION)

Mr. Neil W. Fleming
State's Attorney
Pembina County
P.O. Box 388
Cavalier, ND 58220

Dear Mr. Fleming:

This is in answer to your letter of March 7, 1974, formally requesting my opinion regarding the interpretation of Sections 57-02-01(10) and 57-02-08(15) of the North Dakota Century Code.

You state that these two provisions appear to be in conflict regarding the taxation of farm residences and the defining of the term "farm", presumably because Section 57-02-01(10) states in part that there shall be "a presumption that a unit of land is not a farm unless such unit contains a minimum of ten acres" and Section 57-02-08(15) states in part that the term "farm" means "a single tract or contiguous tracts of agricultural land containing a minimum of ten acres. . .".

Your request is stated in your letter as follows:

> "The specific question which I would like your opinion on is whether or not a far residence can qualify for tax exempt status if it is located on a plot of land less than ten acres in size. I am assuming that the farm residence would meet all of the other statutory requirements."

For the reasons set out in the following paragraphs, it is my opinion that, because of the 1973 amendment to Section 57-02-08(15), a farm residence located on a tract or contiguous tracts (plot) of land less than ten acres in size does not qualify for the property tax exemption provided in Section 57-02-08(15) even though the residence meets all other statutory requirements for the exemption.

Tract, lot, or piece or parcel of real property is defined in Subsection 3 of Section 57-02-01 to mean "any contiguous quantity of land in the possession of, owned by or recorded as the property of, the same claimant, person, or company."

We will consider the presumption of what constitutes a "farm" that is provided in Section 57-02-01(10). That subsection was first enacted in 1963 (see Chapter 376, S.L. 1963) and was amended to its present form in 1971 (see Chapter 533, S.L. 1971). While this subsection does not relate itself expressly to the farm improvement exemption provided in Section 57-02-08(15), this undoubtedly was the reason for its enactment, as is apparent from the following legislative history of it.

The 1961 Legislative Research Committee Report to the 1961 Legislature includes on page 74 the following:

> "It was recommended to the Committee that a 'farm' be defined for assessment purposes. In many instances it was found that people had moved just outside the limits of municipalities on very small acreage and had engaged in some aspects of farming but only realized a portion of their income from this operation. This is a real problem because improvements to farms are exempt from taxation. The Committee recommends that a 'farm' be defined for tax purposes as containing a minimum of five acres and farmed by a person who obtains not less than 50 percent of his income from farming. The Committee found it was very difficult to define a farm and be fair to all interested individuals, but because of the difficulty political subdivisions are having in determining what constitutes a farm the Committee felt an obligation to provide by law for such definition."

On page 77 of that Legislative Research Committee Report is the following explanation of the Committee's bill:

> "Senate Bill No. 55 - Definition of a 'Farm' - This bill would establish a 'presumption' of what would constitute a farm within the meaning of the North Dakota tax exemption for farm improvements. See the report of the Committee on Taxation."

Senate Bill No. 55 was passed by the Senate without change in the 1961 legislative session but it was killed in the House (1961 House Journal pages 1107-1108). It was introduced in exactly the same form in the 1963 legislative session as House Bill No. 838 and was enacted into law without change--see Chapter 376, S.L. 1963. Subsection 10 of Section 57-02-01 which was created by this 1963 law was then amended in 1971 into its present form by Chapter 533, S.L. 1971 and is as follows:

> "57-02-01. DEFINITION. As used in this title, unless the context or subject matter otherwise requires:
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> * * *
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> 0. There shall be a presumption that a unit of land is not a farm unless such unit contains a minimum of ten acres, and the taxing authority, in determining whether such presumption shall apply, shall consider such things as the present use, the adaptability to use, and how similar type properties in the immediate area are classified for tax purposes."

This legislative history of Section 57-02-01(10) shows that this subsection has always been cast in the form of a "presumption" of what shall constitute a farm for purposes of the farm improvements exemption. Since neither Section 57-02-01(10) nor any other law expressly declares this presumption to be conclusive, it must be regarded as a rebuttable or disputable presumption because Sections 31-11-01 and 31-11-02(5) of the North Dakota Century Code so provide.

Senate Bill No. 2318 was introduced in the 1973 Legislative Session and is the source of the 1973 amendment to Section 57-02-08(15). As

introduced, it did not amend Section 57-02-08(15) but did include a statement of legislative intent requiring a strict construction and interpretation of the farm improvement exemption in Section 57-02-08(15). It would also have amended Section 57-02-01(10) to remove the presumption of what constitutes a farm and to provide instead that "farm" means "It would also have added a new Subsection 11 to Section 57-02-01 defining 'farmer' by providing that 'farmer' means. . .". These definitions would have applied for all farm improvements and not just to farm residences.

Thus, Senate Bill No. 2318 as introduced in the 1973 Legislative Session would have amended Section 57-02-01(10) to remove from it the "presumption" of what shall constitute a farm and would have substituted instead the positive definition that "farm" means. . .

The Senate, however, completely amended Senate Bill 2318 by deleting the entire bill and rewriting it so as only to amend Section 57-02-08(15) by adding to that subsection substantially the same provisions that were included in the bill as introduced--see 1973 Senate Journal pages 460-461. The Senate passed the bill as amended. (1973 Senate Journal page 556) and as passed by the Senate the amendments to Section 57-02-08(15) were not limited to farm residences but applied to all farm improvements.

Senate Bill No. 2318 as amended and passed by the Senate was then amended by the House and passed by both houses (see 1973 House Journal pages 1182, 1214, 1216 and 1275 and 1973 Senate Journal page 1056). The amendment of Section 57-02-08(15) by Senate Bill No. 2318 as enacted on final passage (Chapter 447, S.L. 1973) did not apply the amendment to all farm improvements but limited it to residences only. The amendment consisted of the addition of a new sentence to Section 57-02-08(15) which is underlined in the following quote of that subsection:

> 15. All farm structures, and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or structures used in connection with a retail or wholesale business other than farming, even though situated on agricultural land, shall not be exempt under this subsection. It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer; for this purpose the term 'farm' means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres and which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than fifty percent of his annual net income; and the term 'farmer' means an individual who

> normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty percent of his annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which he lives and for which the exemption is claimed;" (Emphasis supplied)

The history of this 1973 amendment to Section 57-02-08(15) in the 1973 Legislature as set out above for Senate Bill No. 2318 shows a consistent legislative intention to remove the presumption, entirely at first for all farm improvements under the bill as introduced and amended by the Senate and then only as to residences as it was amended by the House and enacted into law by the House and the Senate. The new language added to Section 57-02-08(15) by the 1973 amendment is plain and unambiguous; it clearly applies only to residences and for that purpose it provides its own definition of "farm", a definition that differs from the presumptive definition of "farm" that is provided in Section 57-02-01(10). As stated by our Supreme Court in Dickinson v. Thress 69 N.D. 748 at 755, 290 N.W. 653 at 657:

> "Where the language of a statute is plain and unambiguous the 'court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it.' 59 C.J. p. 955-957."

All of the foregoing, I believe, clearly requires the holding, first, that the presumptive definition of "farm" in Section 57-02-01(10) does not apply to the 1973 amendment of Section 57-02-08(15) and second, that a residence located on a plot of land less than ten acres in size does not qualify for the property tax exemption provided in Section 57-02-08(15) even though the residence meets all of the other statutory requirements of Section 57-02-08(15) for exemption as a farm residence.

Sincerely yours,

ALLEN I. OLSON

Attorney General