

**OPINION
74-560**

April 29, 1974 (OPINION)

Mr. R. G. Nerison
City Attorney
P. O. Box 1560
Jamestown, ND 58401

Dear Mr. Nerison:

This is in response to your letter of April 10, 1974, requesting an opinion of this office "as to the tax exempt status of certain real property in the City of Jamestown".

The following is quoted from your letter:

"The real property involved is a portion of the State Office of the North Dakota Conference of the Seventh Day Adventist Church. In addition to the State Offices of the Church, the building houses the North Dakota Bible Book Store which sells religious books, health food, phonograph records, recorded tapes and electronic equipment to reproduce recorded tapes. The North Dakota Bible Book Store has a retail sales tax permit and sells its merchandise to the general public as well as the members of the Church.

"The City Assessor of Jamestown assessed the personal property of the North Dakota Bible Book Store and also assessed 20 percent of the State Office building, that being the portion occupied by the North Dakota Bible Book Store occupied for sales and storage of merchandise to be sold.

"The North Dakota Conference of the Seventh Day Adventist Church has applied for abatement of the aforesaid assessment, and City Council action on the application is being withheld until an opinion from your office is received. I herewith enclose additional information consisting of a letter to me from the City Assessor and a copy of Tax Commissioner Form 83 submitted by the party requesting the abatement."

Presumably this abatement matter is before the City Council for its recommendation as required by Section 57-23-06 of the North Dakota Century Code and apparently the party applying for the abatement is asking that the assessments on both its real property and personal property be abated.

The information you provided does not indicate the year of the assessments for which the application for abatement has been made. We assume that the assessments are not for a year prior to 1972 since abatement of assessments for years prior to 1972 would be barred by Section 57-23-04 of the North Dakota Century Code.

Based upon the information you furnished, it is the opinion of this office that neither the real property nor the personal property to

which your letter relates is exempt from assessment and taxation. We do not, however, express any opinion as to the correctness of the amounts of the assessments since that is in the first instance a matter for determination by the local officials and, further, the information you provided does not include the amounts of the assessments.

The reasons for concluding that the property in question is not exempt from taxation for property tax purposes are set out in the following paragraphs.

The only constitutional and statutory provisions which we believe must be considered are Sections 57-02-03 and 57-02-08(7), (9) and (25) of the North Dakota Century Code and Section 176 of the North Dakota Constitution.

Section 57-02-03 provides in effect that all property is subject to taxation "except as otherwise expressly provided", that is, any particular property is taxable unless some provision of law expressly exempts it.

Section 176 of the North Dakota Constitution provides in part that:

"* * *property used exclusively for* * *religious* * *or* * *purposes shall be exempt from taxation."

Section 57-02-08 provides in part that:

"57-02-08. PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

* * *

"7. All houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected, and any dwellings belonging to religious organizations intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church, together with the lots upon which the same are situated;

* * *

"9. All real property, not exceeding two acres in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consists of one tract or more. All taxes assessed or levied on any such property, while the same was so used for religious purposes, are void and of no effect, and must be canceled. All personal property of any religious corporation or

organization used for religious purposes is exempt from taxation;

* * *

5. 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 subsection. In addition, this subsection shall not exempt from taxation the personal property of any corporation organized pursuant to the nonprofit laws of any jurisdiction which is not exempt from personal property taxation under any other statute."

The only North Dakota Supreme Court case in which exemption from taxation of property owned by a religious organization or corporation was considered is Lutheran Campus Council v. Board of County Commissioners of Ward County 174 N.W.2d. 362. That case, decided in 1970, held that a residence owned by the Lutheran Campus Council and used and occupied by an ordained Lutheran minister who ministered, both in the residence and elsewhere, to Lutheran students and faculty members of Minot State Teachers College on a full-time basis on behalf of the Lutheran Campus Council was exempt under either subsection 7 or 9 of Section 57-02-08. The Court summarized the facts from the record and concluded that summary in the following manner:

"* * *and that the property here involved is therefore not owned or used for financial gain or profit to either the Council or its minister. These findings support our earlier conclusion in this opinion, that the property is exempt from taxation." 174 N.W.2d. at 366-367

While the preceding quotation is not direct holding by the Court that real property owned by a religious organization and used by it for financial gain or profit is taxable, we believe it is a recognition by the Court that real property so owned and used would be taxable because the constitutional and statutory provisions for exemption set out above and in the decision of the Court exempt such property only if it is used for religious purposes.

Property, whether real or personal property, that is owned by a religious organization and used by it for the operation of a retail business is not a use for religious purposes within the meaning of these exemptions provisions even though the income, if any, realized therefrom is used for religious purposes. See YMCA of North Dakota State University v. Board of County Commissioners of Cass County 198 N.W.2d. 241, in which the State Supreme Court in 1972 held that similar constitutional and generally similar statutory exemption provisions for charitable organizations did not exempt apartment

houses owned and operated by the YMCA, a charitable organization, even though the income therefrom was used for charitable purposes.

Also see 84 C.J.S. pages 590-594 relating to "Religious Use" in which numerous cases from other jurisdictions are cited for their holdings that property belonging to religious organizations but not used by them for religious purposes is not exempt under constitutional and statutory exemption provisions similar to those of North Dakota that are quoted above.

Because of the particular facts involved here, the personal property assessment and the real property assessment will now be further discussed on a separate basis.

Considering first the personal property assessments, we assume from the enclosures with your letter that it includes both the business furniture, fixtures and equipment used in the operation of the bookstore in question and the retail stock of merchandise for the store. Since Section 57-02-08(7) exempts only certain real property of a religious organization and since the personal property of a religious organization is exempt only if used for religious purposes (see Section 176 of the State Constitution and subsection 9 of Section 57-02-08), the business furniture, fixtures and equipment and the retail stock of merchandise are, as already explained, not exempted by those provisions.

While most personal property was exempted from taxation by Section 1 of Chapter 528, S.L. 1969, which added subsection 25 (quoted above) to Section 57-02-08, the last sentence of subsection 25 now provides that:

"In addition, this subsection shall not exempt from taxation the personal property of any corporation organized pursuant to the nonprofit laws of any jurisdiction which is not exempt from personal property taxation under any other statute."

Our understanding is that the religious organization which owns and operates this bookstore is incorporated under North Dakota law as a nonprofit corporation. Assuming this is so, then the bookstore personal property does not meet the conditions for exemption that are set out in any of these provisions of law.

Considering further the real property assessment, your letter states that this is an assessment on 20 percent of the state office building of this religious organization and that this assessment represents the portion of the building occupied by the bookstore for its sales area and for storage of the merchandise to be sold.

Where land and a building on it are owned by a lodge or similar organization described in Section 57-02-08(11) and part of the building is used exclusively for exempt lodge purposes and the other part for nonexempt purposes, this office has advised that the portion of the land and building used for nonexempt purposes should be assessed and taxed and the portion used for exempt purposes should not be assessed but should be regarded as exempt. See the enclosed copy of the opinion dated October 10, 1955, and appearing on pages 124-127 of the Report of the Attorney General of North Dakota for the

period July 1, 1954 to June 30, 1956.

Based on the reasons set out in that October 10, 1955, opinion, we believe that where a lot and building on it are owned by a religious organization and part of that property is used exclusively for religious purposes and the other part is used for nonexempt purposes, that portion used for nonexempt purposes is subject to assessment and taxation and the portion used exclusively for religious purposes is exempt.

Sincerely yours,

ALLEN I. OLSON

Attorney General