

**OPINION  
75-188**

August 4, 1975 (OPINION)

Mr. Fred A. McKennett  
Williston City Attorney  
P.O. Box 1306  
Williston, ND 58801

Dear Mr. McKennett

This is in response to your request for an opinion on the question of whether or not a large retail discount store that handles practically all types of merchandise and which is planning to locate in Williston is a "project" within the meaning of Section 40-57.1-02, N.D.C.C. You advise that it has made application to the Board of City Commissioners for ad valorem tax exemption under Chapter 40-57.1, N.D.C.C.

Section 40-57.1-02 presently provides in part as follows:

". . .and the term 'project' shall mean any real property, buildings and improvements on real property or the buildings thereon, and any equipment permanently located on such real property or in such buildings, which are used or useful in connection with revenue-producing enterprises, or any combination of two or more such enterprises, engaged or to be engaged in:

1. Assembling, fabricating, manufacturing mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacturing."

The 1973 amendment to Section 40-57.1-02 removed Subsection 3 from the definition of "project", which subsection read as follows:

"3. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota."

The notes of the committee clerk for the 1973 House Finance and Taxation Committee which heard the bill (Senate Bill No. 2380) amending Section 40-57.1-02 indicates that the elimination of Subsection 3 would make such businesses as "motels, nursing homes, steak houses, etc.," ineligible for the "new industry" exemption. In other words, it appears that the purpose of the amendment was to make ineligible for the exemption a class of businesses that might be termed "service" businesses, as distinguished from the other classes of businesses described in Subsections 1 and 2.

The words "products of. . .manufacturing" as used in Subsection 2 of

Section 40-57.1-02 no doubt were intended to mean tangible items that are manufactured. Since Subsection 2 includes a revenue-producing enterprise that sells products of manufacturing, it is the opinion of this office that a large retail discount store handling practically all types of merchandise would be within the definition of "project" as that term is defined in Section 40-57.1-02 and, insofar as that definition is concerned, would be eligible for the tax exemption. Whether or not the city commission or the state board of equalization should or should not approve a tax exemption for this or any other eligible enterprise is, of course, a matter for them to determine after taking into account the other provisions of Chapter 40-57.1, including its intent and purpose.

Sincerely,

ALLEN I. OLSON

Attorney General