

**OPINION  
76-178**

May 20, 1976 (OPINION)

Mr. John F. Burke

Walsh County State's Attorney

Grafton, ND 58237

Dear Mr. Burke:

This is in response to your letter of April 29, 1976 requesting my opinion on the interpretation of the real estate tax exemption for a farm residence that is provided in Subsection 15 of Section 57-02-08 of the North Dakota Century Code.

You refer to the definitions of "farm" and of "farmer" that appear in that subsection and to the definition of "tract" that appears in Subsection 3 of Section 57-02-01 and you then state your question as follows:

"The question I raise deals with an individual who is a 'farmer' under the statutory definition and whose owned residence is located on a 'farm' as that term is defined above. The farm, however, is located upon a parcel of less than 10 acres owned by the individual with the balance made up of rented farm land which is contiguous to the owned parcel."

Subsection 15 of Section 57-02-08 was amended in 1973 by adding to it the language with which you are concerned. This subsection is quoted in full as follows with the language that was added by the 1973 amendment being underlined:

5. 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 anyone 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;"

The term "farm" as defined in the above quoted Subsection 15 is defined in part as meaning "a single tract or contiguous tracts of agricultural land containing a minimum of ten acres . . ." The term "tract" is not defined in that subsection but, as you note, Subsection 3 of Section 57-02-01 defines "tract" as meaning "any contiguous quantity of land in the possession of, owned by or recorded as the property of, the same claimant, person, or company."

While the definition of "tract" in Subsection 3 of Section 57-02-01 is phrased in reference to a single tract being in the possession of or owned by or recorded as the property of the same person, the definition of "farm" in Subsection 15 of Section 57-02-08 is phrased, in reference to size of the farm, as meaning a single tract or contiguous tracts of agricultural land containing a minimum of ten acres. There is nothing in Subsection 15 of Section 57-02-08, including the 1973 amendment to it, which requires the farmer to own the tract or contiguous tracts comprising the farm on which his residence is located in order for that residence to be exempt, at least if that farmer is actively farming as distinguished from a farmer who has retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which he lives and for which the exemption is claimed.

A farmer who rents a tract of agricultural land is in "possession" of that tract within the meaning of Subsection 3 of Section 57-02-01. Since a "farm" for purposes of the farm residence exemption may consist of two or more contiguous tracts of agricultural land containing a minimum of ten acres, one or more of those tracts may be rented by the farmer who farms them and one or more may be owned by him. If the residence he occupies is located on one of those contiguous tracts, it is exempt even if it is less than ten acres in size and regardless of whether the tract is owned or rented by him. We believe these statutes clearly exempt such a residence and we therefore agree with your interpretation of them even though the farm residence exemption provision requires that it be strictly construed and interpreted.

Finally, we wish to note that in an opinion dated April 6, 1971, issued from this office to the then Walsh County State's Attorney Rodney Webb, we said that there were two conditions or requirements for exemption of farm structures and improvements under Subsection 15 of Section 57-02-08 (as it read prior to the 1973 amendment to it): first, location on agricultural lands, and, second, use as part of a farm operation; we also said that ownership of the improvements by any specific person was not one of the criteria for exemption. A

copy of that opinion is enclosed. It appears that the 1973 amendment for exemption of a farm residence occupied by a farmer who operates the farm on which it is located was probably carefully drafted to avoid requiring that the farmer own the residence or the land on which it is located since ownership by a particular person was not a requirement before the amendment.

Sincerely yours,

ALLEN I. OLSON

Attorney General