

**OPINION
76-183**

July 30, 1976 (OPINION)

Mr. David L. Drey

Office of the States Attorney

Ward County Courthouse

Minot, ND 58701

Dear Mr. Drey:

Recently you requested an opinion from this office regarding an interpretation of subsections 6 and 8 of Section 57-02-08 of the North Dakota Century Code. Your request arises from a partial application for abatement and settlement of real estate taxes for the year 1975 filed by the St. Joseph's Hospital Corporation located at Third Street and Fourth Avenue S.E. in Minot, North Dakota.

The specific factual circumstances set forth by you reveal that as part of its four-year medical school program, the University of North Dakota has opened several Family Practice Centers throughout North Dakota. To implement this program in Minot, North Dakota, the University has leased space from St. Joseph's Hospital. However, the lease payments are not made with a view to profit. You have provided this office with a copy of February 17, 1976 letter to the Ward County Auditor from the controller of St. Joseph's Hospital which amplifies the details of this program in Minot, to wit:

"The Family Practice Center was developed to provide physical facilities for a resident training program jointly sponsored by the United States government, State of North Dakota, University of North Dakota Medical School, Trinity Medical Center, the Air Force Hospital, Medical Arts Clinic, Independent Minot Physicians and St. Joseph's Hospital. Federal grant funds, appropriations from the State of North Dakota, and financial commitments from both Trinity Medical Center and St. Joseph's Hospital for payment of resident's stipends. Initially, such payment should approximate \$25,000.00 annually from each hospital for the period July 1, 1975, to June 30, 1976, and expand commensurately with the increase in residents from six to ten beginning July 1, 1976. Beginning July 1, 1977, the number will increase to twelve and require approximately \$50,000.00 annually from each hospital."

Assuming the above facts to be true, the Family Practice Center not only is an educational facility for the University, it is an integral participant in the services provided by the Hospital to the community of Minot.

The Minot city assessor has assessed that part of the Hospital's facilities leased to the University for the Family Practice Center and it is this area that is the subject of the abatement and settlement proceedings. The city assessor has relied upon a November

12, 1969 opinion of the Attorney General written at the request of State Senator Edwin C. Becker of Willow City, North Dakota. The Hospital claims that the provisions of subsections 6 and 8 of Section 57-02-08 of the North Dakota Century Code exempt subject facilities from real estate taxation.

Subsections 6 and 8 of Section 57-02-08 of the North Dakota Century Code provided on the 1975 assessment date the following exemptions:

"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:

* * *

6. All schoolhouses, academies, colleges, institutions of learning, with the books and furniture therein, and the grants attached to such buildings necessary for their proper occupancy, use, and enjoyment and not otherwise used with a view to profit, and all dormitories and boarding halls, including the land upon which they are situated, owned and managed by any religious corporation for educational or charitable purposes for the use of students in attendance upon any educational institution, if such dormitories and boarding halls shall not be managed or used for the purpose of making a profit over and above the cost of maintenance and operation;

* * *

8. All buildings and contents thereof belonging to institutions of public charity including public hospitals under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions;"

Thus, subsection 6 of Section 57-02-08 of the North Dakota Century Code, along with the provisions of Section 176 of the North Dakota Constitution, specifically exempts the property interest of the University of North Dakota.

The remaining question is whether that portion of the Hospital which is leased to the University of North Dakota is exempt pursuant to the provisions of subsection 8 of Section 57-02-08 of the North Dakota Century Code, when it is leased to a tax exempt entity.

In paragraph 1 of the Syllabus in Lutheran Campus Council v. Board of County Commissioners, Ward County, 174 N.W.2d. 362 (N.D., 1970), at page 363, the North Dakota Supreme Court held:

1. It is well settled that provisions exempting property from taxation are to be strictly construed; that their operation should not be extended by construction; and that the power and right of the state to tax are presumed and the

exemption must be clearly granted. This does not mean that there should not be a liberal construction of the language used in order to carry out the expressed intention of the fundamental lawmakers and the Legislature but, rather, that the property which is claimed to be exempt must come clearly within the provisions granting such exemption."

At page 366 of the Lutheran Campus Council decision, *supra*, the Court quoted and adopted the following language of the Nebraska Supreme Court in *Lincoln Women's Club v. City of Lincoln*, 133 N.W.2d. 455 (Neb., 1965) at page 459:

"A liberal and not a harsh or restrained construction is to be given to the terms 'educational,' 'religious,' and 'charitable' in order that a true intent of the constitutional and statutory provisions may be realized. The judicial interpretation of such statute should always be reasonable."

In paragraph 7 of the Syllabus in *Evangelical Lutheran Good Samaritan Society v. Board of County Commissioners*, 219 N.W.2d. 900 (N.D., 1974), at page 901, the North Dakota Supreme Court held:

. A charitable institution for the aged and infirm is not being 'used with a view to profit' as that phrase is used in Section 57-02-08(8), N.D.C.C., where the profit that is earned by such institution is directly and entirely related to the institution's charitable use, and where such profit inures to no private individual but, instead, is reinvested into such charitable institution for its upkeep and expansion."

With specific reference to subsection 8 of Section 57-02-08 of the North Dakota Century Code, it is the use of the property which must be considered, as well as its ownership, in making the determination of whether the property is exempt from taxation. *YMCA of North Dakota State University v. Board of County Commissioners*, 198 N.W.2d. 241 (N.D., 1972).

In applying subsection 8 of Section 57-02-08 of the North Dakota Century Code, the North Dakota Supreme Court in *North Dakota Society for Crippled Children and Adults v. Murphy*, 94 N.W.2d. 343 (N.D., 1959), at page 347, said:

"We hold that the use contemplated by our statute is one that results in a benefit that has at least some direct and primary connection with the public charitable activities of the institution."

In applying these rules of construction to subsection 8 of Section 57-02-08 of the North Dakota Century Code, and the facts at hand, it is apparent that the application for abatement and settlement of real estate taxes for the year 1975 which was filed by the St. Joseph's Hospital Corporation should be granted to the extent that it would exempt that portion of the facility owned by the Hospital and leased to the University of North Dakota for its Family Practice Center. Not only does the Family Practice Center have a direct and primary connection with the Hospital, it is, in fact, an integral and

composite part of the services provided by the Hospital and the lease payments do not inure to the benefit of any private individual.

To the extent that the city assessor has relied upon the above-cited opinion of this office written in 1969, this present opinion does not serve to reverse or diminish the effect of the former opinion. The former opinion was based upon facts which are factually distinguishable from the facts at hand and did not concern subsection 8 of Section 57-02-08 of the North Dakota Century Code.

Sincerely,

ALLEN I. OLSON

Attorney General