

**OPINION**  
**76-187**

October 5, 1976           (OPINION)

Mr. Arne F. Boyum

Rolette County State's Attorney

Rolla, ND 58367

Dear Mr. Boyum:

This is in response to your letter of August 31, 1976, requesting an opinion on the question of whether the 1975 real estate taxes on the two-story residence in Rolla that is occupied by the Sisters of St. Mary of the Presentation should be abated by the board of county commissioners pursuant to an abatement application submitted by the Sisters' organization.

In checking our files we note that two communications have already been issued by this office relative to the claim of tax exemption for this same property, both to Mr. J. Howard Storman, Rolla City Attorney. The first was an opinion dated September 26, 1975, responding to his letter of August 8, 1975, and the second was the letter of February 10, 1976, responding to his letter of December 17, 1975. A copy of each is enclosed. The opinion of September 26, 1975 did not deal with a claim of exemption for a particular year; the letter of February 10, 1976, dealt only with the applications for the abatement of the 1974 taxes. In your request of August 31, 1976, you state that the county commissioners allowed abatement of the 1974 taxes and are reserving a decision on the 1975 taxes pending receipt of an opinion from this office on the status of this property.

Your question is: "Is the residence occupied by the Sisters exempt from real estate taxation under 57-02-09 of the North Dakota Century Code?"

In addition to the information provided in your letter, you also enclosed with it a copy of a letter dated August 26, 1976 to you from Leo Beauclair, attorney for the Sisters' organization, which you state explains their position on the matter.

We do not have a copy of the application for abatement of the 1975 taxes on this property but we assume from your letter and from Mr. Beauclair's letter that exemption is claimed under Subsections 7, 8, 9 and 25 of Section 57-02-08 of the North Dakota Century Code.

In considering your question of whether this property is exempt under Section 57-02-08, and specifically Subsections 7, 8, 9 and 25 thereof, the following comments and statements are necessarily based upon the information furnished.

As to the exemption provided in Subsection 25 of Section 57-02-08, that exemption relates to the general exemption for virtually all personal property that is not assessed by the state board of equalization which was enacted by the 1969 legislature; since the

residence in question is clearly real property within the definition provided in Section 57-02-04, we do not believe that Subsection 25 can be regarded as exempting it from real property taxation.

As to a claim of exemption under Subsection 7 or 9 of Section 57-02-08, those subsections exempt a dwelling owned by a religious corporation or organization which is used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church. Thus, two conditions or tests for exemption must be satisfied, that is, ownership and use. It is not clear to us from your letter or from the prior correspondence referred to above whether St. Joachim's Catholic Church continues to be the actual owner of this property or whether ownership was transferred to the Sisters of St. Mary of the Presentation, and if so, when. Even if it is assumed that the test of ownership by a religious organization is met, it seems clear from the information provided that the test of use of the property for the residence of the bishop, priest, rector or other minister in charge of the services of the church is not met. We therefore do not believe that the property can be regarded as exempt pursuant to either Subsection 7 or Subsection 9 of Section 57-02-08.

As to the claim of exemption under Subsection 8 of Section 57-02-08, that subsection also provides for both an ownership test and a use test, that is, the property must not only be used for public charity, it must also be owned by an institution of public charity. Although it is not clear, the information provided in your letter and in the copy of Mr. Beauclair's letter which you sent with yours indicates that this property is still owned by St. Joachim's Catholic Church. This conclusion is consistent with the statement in Mr. Beauclair's letter of October 31, 1975, to Ms. Judith Boppre, Rolette County Auditor, in which he indicated that St. Joachim's Church retained title. A copy of that letter was furnished to us by Mr. Storman with his letter of December 17, 1975, referred to above.

If ownership of this property is in St. Joachim's Catholic Church, as it appears to be, then it presumably belongs to a religious institution rather than to an institution of public charity and therefore cannot be regarded as exempt pursuant to Subsection 8 of Section 57-02-08 unless it can be established that the property is, within the meaning of Subsection 8, part of the hospital and under its control.

As to the use test required by Subsection 8 of Section 57-02-08 for the exemption of property, that subsection provides that the property must be "used wholly or in part for public charity".

In *North Dakota Society for Crippled Children & Adults v. Murphy*, 94 N.W.2d. 343 (N.D. 1959), our Supreme Court, in applying this provision to residential property owned by a charitable institution, held that it was the "use" of the property rather than the "purpose of the use" that determined whether this condition for exemption was met. The court 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. A monetary saving or a mere convenience is not such a benefit. In this case the property is exclusively residential." 94 N.W.2d. at 347.

Relating this to the question you present, it appears to us that, even though the purpose of the use of this property by the Sisters who occupy it may be the furtherance of their charitable activities and those of the hospital, the information furnished does not clearly establish that the use is not exclusively residential. In his letter of August 26, 1976 to you, Mr. Beauclair states, at the top of page 2, that:

". . . it was therefore agreed that the Sisters would construct nursing quarters on property adjacent to the hospital for the hospital's convenience in having prompt access to the hospital by the Sisters."

Other than the convenience of location of this residence to the hospital, no other facts are asserted to show that the use of the residence "results in a benefit that has at least some direct and primary connection with the public charities activities of the "hospital and is not a 'mere convenience' within the meaning of the above quotation from the Crippled Children case. The following statements in your letter do not indicate a use that is other than exclusively residential:

"During the dispute over taxation of the property, the Sisters leased the house to the Rolla Community Hospital for a long period of time.

The home occupied by the Sisters is occupied solely by them and is not a general nurses' quarters for nurses employed at the Rolla Community Hospital. All those members of the Order employed at the hospital do receive a salary for their work."

In the Crippled Children case, 94 N.W.2d. at 345, the Court said: ". . . the burden is on the claimant of a tax exemption to establish the exempt status of his property . . ." On the basis of the information furnished, we do not believe the claimant here has established the exempt status of this property.

Sincerely,

ALLEN I. OLSON

Attorney General