

**OPINION  
77-90**

April 6, 1977           (OPINION)

Mr. John T. Burke  
Walsh County State's Attorney  
Walsh County Courthouse  
Grafton ND 58237

Dear Mr. Burke:

This opinion is written in response to your request for an opinion concerning the application of subsection 15 of section 57-02-08, N.D.C.C., to a certain farm structure. Specifically, your concern is directed toward that taxable status for real property tax purposes of a potato warehouse located upon a lot and block within the limits of Auburn, an unincorporated city. You have stated further that Auburn is in Farmington Township, and that while it was never incorporated, a plat was recorded. You have presumed such recording was made pursuant to the provisions of chapter 40-50, N.D.C.C.

Your letter also indicates that the owner of the lot and the potato warehouse is seeking an abatement of the tax levied upon such structure. In addition, you have said that the abatement applicant can be presumed to be a "farmer" as defined by subsection 15 of section 57-02-08, N.D.C.C., and that he owns farmland of more than ten acres which is contiguous to the lot upon which the potato warehouse is located. Finally, the potato warehouse is used as part of a farm plant.

It is your opinion that three questions must be answered to determine the taxable status of subject potato warehouse pursuant to the provisions of chapter 57-02, N.D.C.C. Your questions are presented as follows:

"(1) When there is a recording of a plat of a townsite under chapter 40-50, N.D.C.C., is this a dedication of the streets and other public places described therein even when there is never an incorporation of the town?

"(2) Or, if the platting of a townsite under chapter 40-50, N.D.C.C., is accomplished but the town is never incorporated, can the platting be treated the same as land platted under section 57-02-39, N.D.C.C.?

"(3) Is a potato house located on 'Agricultural lands' as that term is defined by section 57-02-08(15), N.D.C.C., when it is located upon platted lots in an unincorporated townsite?"

In response to your first question, this office in an earlier opinion dated August 7, 1968, and directed to the Honorable Edwin Sjaastad, State Tax Commissioner, held:

"The recording of a plat under normal circumstances constitutes an offer to the public to dedicate the streets and alleys laid out in the plat, which offer to be a completed dedication must

be accepted on the part of the public. This acceptance may be presumed or may be manifested by the acts of the public or by the acts of municipal officials which indicate an assumption of dominion over the property dedicated. In this connection, see *Hille v. Nill*, 58 N.D. 536, 262 N.W. 635; *Grand Forks v. Flom*, 79 N.D. 289, 56 N.W.2d. 324; and *Ramstad v. Carr*, 31 N.D. 506, 154 N.W. 195."

Illustrations of such acceptance would be either the actual use of the platted streets or alleys by the public or the improvement and maintenance of such streets and alleys by the municipality.

Therefore, in this same opinion, in answer to a question containing facts similar to the case at hand, it was the opinion of this office that if there has been an accepted dedication then the lot in question would constitute urban property, as opposed to rural property as defined in *Eisenzimmer v. Bell*, 32 N.W.2d. 891, and would not qualify for the exemption provided for in subsection 15 of section 57-02-08, N.D.C.C. However, if the offer of dedication has not been accepted, then, of course, the buildings located on the lots as described would be classified as being located on agricultural land for purposes of this exemption.

At this time we see no reason to digress from or to overrule the previous opinion of this office. Since you have indicated that all other requirements of subsection 15 of section 57-02-08, N.D.C.C., have been met in the instant case, it is the opinion of this office that the subject potato warehouse qualifies for the farm building exemption provided that the offer of dedication of the subject plat has not been accepted. For that reason, we find it unnecessary to answer your other two questions.

Sincerely,

ALLEN I. OLSON

Attorney General