

**OPINION
78-159**

December 29, 1978 (OPINION)

Mr. Gordon O. Hoberg
Logan County State's Attorney
Logan County Courthouse
Napoleon, ND 58561

Dear Mr. Hoberg:

This is in reply to your letter of December 6, 1978, requesting an opinion concerning Section 57-02-26 of the North Dakota Century Code.

You state that your local Director of Tax Equalization interprets this Code section to mean that all persons farming state-owned land or political subdivision-owned land must pay taxes on the land. Apparently this has prompted one of the members of the Gackle School Board to request an opinion as to whether the lessee must pay taxes on land that he leases from the school board; more specifically, you advise, this land was given to the school with restriction that the school cannot sell the land but may lease the land for farming purposes with the income to be used by the school.

Your question is: May this land be taxed and does the lessee have to pay the tax?

This office has issued a number of opinions in the past on this question of whether privately held leasehold or other possessory interests or privileges in government-owned real estate are subject to local assessment for real estate tax purposes. The most recent of these opinions is that of November 27, 1978, issued to Sheridan County State's Attorney Douglas P. Roberts at McClusky, North Dakota, in which it is held that a teacher living in a teacherage owned by a school district and paying rent to the school district is liable for payment of real estate taxes thereon. A copy of that opinion is enclosed.

Also enclosed is a copy of the opinion issued on October 26, 1978, to Mountrail County State's Attorney Q. R. Schulte at Stanley, North Dakota, which refers to the opinion of July 27, 1973, issued by this office to Divide County State's Attorney Michel W. Stefonowicz at Crosby, North Dakota, a copy of which is also enclosed. Both of these opinions relate to the assessment for real estate tax purposes of privately held interests or privileges in land and in improvements on land owned by a municipal airport authority. Although these two opinions relate to privately held interests or privileges in real property owned by a municipal airport authority rather than by a school district, the same provisions of law are applicable and therefore they will no doubt be of interest to you.

Your question relates to liability for real estate taxes in a case where land is owned by a public school district and is leased to an individual for farming purposes. Your question is similar to those to which the enclosed opinions relate, that is, is an individual who

leases or holds other possessory interests in government-owned real estate liable for real estate taxes thereon?

For the reasons set out in the enclosed opinions, it is the opinion of this office that the individual who is leasing the land in question from the Gackle School District is liable for assessment of real estate taxes on his possessory (leasehold) interest in this land. The school district is, of course, exempt under Section 176 of the North Dakota Constitution and under N.D.C.C. Section 57-02-08(3) from assessment for real estate taxes on its ownership of the land and no real estate tax lien can attach to that ownership interest. Only the possessory (leasehold) interest of the lessee in the land should be assessed for the real estate taxes and the lien for real estate taxes will attach only to the lessee's leasehold interest in the land if the taxes are not paid; that leasehold interest would be subject to the usual real estate tax sale proceedings if the real estate taxes become delinquent and remain unpaid and, in addition, N.D.C.C. Section 57-24-31 proves that those real estate taxes may be collected from the lessee as a personal charge against him in the same ways as delinquent personal property taxes are collected.

We trust that this answers your question fully.

Sincerely,

ALLEN I. OLSON

Attorney General