

**OPINION
78-162**

October 26, 1978 (OPINION)

Mr. Q. R. Schulte
States Attorney
Mountrail County
Stanley, ND 58784

Dear Mr. Schulte:

This is in response to your letter of October 12 from which the following is quoted:

"The City of Stanley owns the Stanley Airport, but it is operated by a Municipal Airport Authority. The Authority leases space for private hangars and during the past years, the Township wherein the airfield is located, has taxed the hangars. The individuals owning the hangars have now made a complaint stating that they should not have to pay any tax on the Municipal owned airport to a Township.

"The further question arises that if a Township can tax private built hangars, who gets that tax money; the Township, City or Municipal Airport Authority."

Enclosed is a copy of the July 27, 1973, opinion from this office that was sent to Divide County States Attorney Michel W. Stefonowicz in which we concluded that the property tax laws provide for the assessment and taxation of privately owned hangars located on city owned land and also for the assessment and taxation of the value of the right to use the sites on which the hangars are located.

We believe the conclusions reached in that 1973 opinion apply also to the situation where the land on which the hangars are located is owned by a municipal airport authority rather than by the city which created the airport authority. The land and other property owned by the municipal airport authority are of course exempted by N.D.C.C. Section 2-06-18 and 57-92-08(3) from assessment and taxation to the airport authority or the city but privately owned interests in real property owned by the airport authority are not exempt unless there is an express provision in the law for their exemption. We do not know of any statute which would exempt the real property interests owned by the individuals to which you letter refers.

As to your further question of who gets the tax money if the township can tax these privately built hangars, we understand from your letter that the Stanley Airport is not located within the corporate limits of the City of Stanley. Assuming that to be so, it is our opinion that these privately owned interests would be assessed and taxed by the township in which they are located rather than by the City of Stanley and, along with other taxable property in the township but outside the corporate limits of a city, would be subject to the tax levies of the township, county, school district, and any other taxing district in which they are located. The tax levied by the township on those private interests in the real property of the Stanley

Airport Authority would go to the township, not to the City of Stanley or to the airport authority because, as explained below, the situs of those private interests is not within the corporate limits of the city and its jurisdiction to tax them.

The Airport Authorities Act, N.D.C.C. Chapter 2-06, clearly contemplates that publicly owned real property for an airport may be either within or outside the corporate limits of a city. An airport authority created pursuant to Section 2-06-02 of that Act has the power under Section 2-06-07 "to certify, annually to the governing bodies creating it, the amount of tax to be levied by said governing bodies for airport purposes." Section 57-15-36 provides that:

"57-15-36. TAX LEVY FOR AIRPORT PURPOSES. In cities supporting airports for which no levy has been made by a park board or other taxing district within the corporate limits of such city, a levy in addition to all other levies permitted by law, not to exceed four mills on the net taxable valuation of property in such city, may be made for such purposes."

Section 40-19-01 provides that the city assessor "within his city shall perform all the duties necessary in assessing the property within the city for" tax purposes.

We have found no statute which authorizes a city to assess and levy a property tax on taxable property that has a situs outside for the city. See 64 C.J.S. Municipal Corporations, Section 2003. All of the statutes cited above indicate that a city can assess and tax for city or municipal airport purposes, including for municipal airport authority purposes, only taxable property that is within the corporation limits of the city.

Although the laws pertaining to townships do not "apply in any way to any portion of the state which is embraced within the limits of any incorporated city", see Section 58-01-02, such statutory provisions as Sections 57-15-19, 58-03-07(13) and 58-06-01(9) clearly intend that taxable property that is located within the boundaries of an organized township but not within the corporate limits of any city in the township is subject to taxation by the township for township purposes.

For these reasons, and on the assumption that the Stanley Airport owned and operated by the Municipal Airport Authority is located outside the corporate limits of the City of Stanley, it is our opinion that the privately owned hangars and other privately owned interests in the Airport's real property are not subject to assessment and taxation for city or municipal airport authority purposes but are subject to assessment by the township and to the tax levies of the township and of the school district, county, and any other taxing district in which such property is located.

Sincerely,

ALLEN I. OLSON

Attorney General