

**OPINION
78-196**

July 5, 1978 (OPINION)

Mr. Thomas B. Jelliff
States Attorney
Grand Forks County
P. O. Box
Grand Forks, ND 58201

Dear Mr. Jelliff:

As a result of a letter you received from the Grand Forks County Director of Tax Equalization, you have asked this office to respond with an opinion to the questions contained therein.

The first question is set forth as follows:

1. Is a farm laborer a farmer as defined in Subsection 15 of Section 57-02-08, N.D.C.C., and the residence which he occupies on the farm, as defined in such Subsection 15, on which he works exempt from taxation as provided in such Subsection 15?

I am assuming that the answer to question no. 1 would also apply to a mobile home located on and permanently attached to the grounds and occupied by a farm laborer irregardless (sic) of who owns the mobile home, if such assumption is incorrect please advise."

It is the opinion of this office that a farm laborer is not a farmer as defined in Subsection 15 of Section 57-02-08 N.D.C.C. The reasoning for this conclusion follows.

Subsection 15 of Section 57-02-08 N.D.C.C. defines a farmer as follows:

". . . 'farmer' means an individual who normally devotes the major portion of his time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and who normally receives not less than fifty percent of his annual net income from any one or more of the foregoing activities; and the term also includes an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which he lives and for which the exemption is claimed;" (Underlining for emphasis.)

The general definition of "farm laborer" is found in 35 C.J.S. Farm at p. 953 as follows:

"FARM LABORER. Defined generally as a man hired to work on a farm; a laborer employed in or about the business of farming; any man employed to work on a farm and to perform the work originally done there; one who devotes his time to ordinary farm labor as a gainful occupation with some reasonable degree

of regularity and continuity." (Underlining for emphasis.)

The general definition of "wages" is found in 92 C.J.S. Wage at p. 1047-1038 as follows:

"A necessary element of the definition of the word 'wages' is the rendition of some sort of service, the idea expressed by the word being compensation for personal services, as distinguished from profits realized in commercial dealings, or returns from investments or capital, or returns from the labor of others, and the term 'wages' is never applied in describing the gain, profit, or recompense which accrues to one who is conducting a business of his own and on his own account."
(Underlining for emphasis.)

Therefore, a laborer working for wages cannot be equated with a person who receives not less than fifty percent of his net income from an agribusiness operation as set forth in Subsection 15 of Section 57-02-03 N.D.C.C. The farm laborer assumes no risk of the business venture of farming, has no material part in management, and receives no business income from the farming operation.

It is interesting to note that in regard to the farm residence exemption, the legislative intent is specifically set forth in Subsection 15 of Section 57-02-08 N.D.C.C. as follows:

"It is the intent of the legislative assembly that this exemption as applied to a residence shall be strictly construed and interpreted to exempt only a residence which is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption shall not be applied to property which is occupied or used by a person who is not a farmer;"
(Underlining for emphasis.)

Subsection 2 of Section 54-01-26 N.D.C.C. provides that a person can only have one residence. Thus, while the building on the farm may be used as the residence of the farm laborer, it cannot be used as the residence of the farmer-owner, if he in fact resides in another place of residence.

Nevertheless, Subsection 15 of Section 57-02-08 also exempts from real property taxation all farm structures and improvements located on agricultural lands and which are used or intended for use as a part of a farm plant. Such being the case, the residence in question would be exempt if it met the latter criteria. That is, housing for a farm laborer would be exempt if it was utilized as a part of the farm plant.

In regard to the second part of the first question, it cannot be assumed that the entire answer just given would also apply to a mobile home located on and permanently attached to the ground and occupied by a farm laborer regardless of who owns the mobile home.

The reason for this is that Subdivision b of Subsection 2 of Section 57-55-01 N.D.C.C. which was enacted by the 1977 legislature provides as follows:

"57-55-10. Exemptions - Exceptions.

. . .

2. The provisions of this chapter shall not apply to a mobile home which:

. . .

- b. Qualifies as a farm residence as described by subsection 15 of section 57-02-08, provided such mobile home is permanently attached to the ground."

For the reasons stated above, the housing occupied by a farm laborer cannot qualify as a farmer's residence for exemption purposes. Furthermore, no reference is made to the entire exemption provisions of Subsection 15 of Section 57-02-08 N.D.C.C. Thus, the exemption from real property taxation of all farm structures and improvements located on agricultural lands, and which are used or intended for use as a part of a farm plant, does not come within the provisions of Subdivision b of Subsection 2 of Section 57-55-10 N.D.C.C. Therefore, the mobile home permanently attached to the ground and used as housing for a farm laborer cannot qualify for an exemption pursuant to the provisions of Chapter 57-55 N.D.C.C. and Subsection 15 of Section 57-02-08 N.D.C.C. unless it is owned by the same person who owns the land. See Subdivision c of Subsection 2 of Section 57-55-10 N.D.C.C. In such a case, if the mobile home was the residence of a farmer who owned both the home and the land to which it was permanently attached it would be exempt pursuant to the provisions of Subsection 15 of Section 57-02-08 N.D.C.C. Likewise, in similar circumstances if the owner-farmer used his permanently attached mobile home as shelter for his farm laborer, it would be exempt as part of the farm plant pursuant to the provisions of Subsection 15 of Section 57-02-08 N.D.C.C.

The second question is set forth as follows:

2. Assume that there is more than one house on a farm with one house being occupied by a qualifying farmer and exempt from taxation under Subsection 15 as a farm residence and a second house on the same farm is occupied by a farm laborer who is employed by the qualifying farmer-occupant of the first house.

With regard to Subsection 15 of Section 57-02-08, N.D.C.C., is the so-called second house occupied by the farm laborer a farm structure or improvement intended for use as part of a farm plant and thus exempt from taxation or is it a residence and thus subject to taxation because it is occupied by someone who is not a farmer?"

Because the answer to the second question is contained within the answer to the first question, it is not necessary to address the issue again.

Sincerely,

ALLEN I. OLSON

Attorney General