

Date Issued: June 15, 1981 (AGO 81-60)

Requested by: Jerald L. Engelman,
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- QUESTION PRESENTED -

Whether a city council may adopt a resolution authorizing a low rent housing program and agree that the low rent housing is exempt from real and personal property taxes.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a city council may adopt a resolution authorizing a low rent housing program and agree in the resolution that the low rent housing shall be exempt from real and personal property taxes.

- ANALYSIS -

Section 23-11-02 of the North Dakota Century Code provides for the creation of housing authorities and states, in part:

23-11-02. CREATION OF HOUSING AUTHORITIES. . . . there is created a public body corporate and politic to be known as the "housing authority" of the city or county, as the case may be. . . .

The housing authority under this section becomes a public corporation for public purposes, and as such is subject to Article X, Section 5, of the North Dakota Constitution, which provides, in part:

. . . The property of the United States and of the state, county and municipal corporations and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. . . .

In May of 1977, the city of Mayville entered into a resolution authorizing the execution of a cooperation agreement between the city of Mayville and the housing authority of Traill County. Section 3(a) of the resolution agreement states, in part:

3. (a) Under the constitution and statutes of the State of North Dakota, all Projects are exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. . . . During such period, the Local Authority shall make annual payment (herein called "Payments in Lieu of Taxes") in lieu of such taxes and special assessments and in payment for the Public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

Section 23-11-29, N.D.C.C., allows for such tax exemptions and payments in lieu of taxes and states as follows:

23-11-29. TAX EXEMPTIONS AND PAYMENTS IN LIEU OF TAXES. The property of an authority including an authority created under Indian laws recognized by the federal government is declared to be public property used for essential public and governmental purposes and shall be exempt from all taxes and special assessments of the city, the county, the state, or any political subdivision thereof. In lieu of such taxes or special assessments, an authority may agree to make payments to the city, county, state, or any such political subdivision for improvements, services, and facilities furnished thereby for the benefits of a housing project, but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished.

The North Dakota Supreme Court dealt with this issue in *Ferch v. Housing Authority of Cass County*, 59 N.W.2d. 849 (N.D. 1953). The Court stated:

It is clear that the legislative intent is that any property held by a housing authority, a public corporation, for public purposes shall be exempt from taxation. The constitutional and legislative declarations are definite that property held exclusively for "public purposes" shall be exempt from taxation. 59 N.W.2d. 849, 865.

The Court went on to note:

. . .The property of the Housing Authority is expressly exempted from taxation. Hence, there can be no question of the surrender or suspension of the power to tax on the part of the city. Furthermore, the payment of a percentage of the shelter rents has no bearing, either expressly or by implication, on the subject of tax exemption of property of the Authority. The payment of a percentage of the shelter rents to the municipality is merely reimbursement for the services which the municipality must necessarily render to the project. 59

N.W.2d. 849, 866.

In addition, the Court in *Fradet v. City of Southwest Fargo*, 59 N.W.2d. 871 (N.D. 1953), ruled on the making of in lieu payments authorized by section 23-11-29, N.D.C.C.:

Under this section it is clearly the duty of the county housing authority to make separate payments to the respective taxing bodies. The municipality has no authority to assume the burden of collection and disbursement and the attendant expense and responsibility. 59 N.W.2d. 871, 881.

It is clear that under the Constitution and statutes of the State of North Dakota, such low rent housing units are exempt from the general real and personal property taxes and special assessments as so declared under the resolution agreement, Section 3(a).

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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