

Office of the Attorney General  
State of North Dakota

Opinion No. 81-98

Date Issued: September 9, 1981

Requested by: Representative James Gerl

--QUESTION PRESENTED--

Whether Chapter 40-57.1 of the North Dakota Century Code prohibits the State Board of Equalization or a municipality from adopting a policy which encourages new industries seeking tax exemptions to hire North Dakota workers, to the extent they are available and qualified, during both the construction and operation phase of the project for which a tax exemption is sought.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that there is nothing in Chapter 40-57.1, N.D.C.C., or any other provision of the Century Code or the Constitution, which prohibits the State Board of Equalization or a municipality from adopting a policy which encourages new industries seeking tax exemptions to hire North Dakota workers, to the extent they are available and qualified, during both the construction and operation phase of the project for which a tax exemption is sought.

--ANALYSIS--

On December 17, 1979, in an opinion of this office addressed to Representative James Gerl, the Attorney General held that nothing in Chapter 40-57.1, N.D.C.C., required a new business to employ residents of this state to the extent qualified residents are readily available. I have reviewed that opinion, and I find it to be a correct conclusion to the question presented. Accordingly, I hereby reaffirm the opinion of this office dated December 17, 1979.

This opinion answers the reverse side of the question presented in the opinion of December 17, 1979. I can find nothing which prohibits the State Board of Equalization or a municipality from adopting a policy which encourages new industries seeking tax exemptions under Chapter 40-57.1 to hire North Dakota workers, to the extent they are available and qualified, during both the construction and operation phase of the project for which a tax exemption is sought. Indeed, the adoption of such a policy is in my opinion in accordance with the legislative intent as set forth in Section 40-57.1-01, N.D.C.C. The Legislature specifically found in its declaration of purpose that one of the purposes of this law was to add 'to the volume of employment, particularly during those seasons when

employment in farming and ranching is slack, thus alleviating unemployment among people of the state.'

The relevant provisions of Chapter 40-57.1, N.D.C.C., make it clear that both municipalities and the State Board of Equalization have the right 'in their discretion' to grant 'after negotiation with a potential project operator, partial or complete exemption' from certain taxes. This exemption can be for a period of up to five years. There is nothing that requires the State Board of Equalization or a municipality to grant a full five-year exemption once it determines that the project ought to receive an exemption. Rather, the exemption can be granted for all or any part of a five-year period. In accordance with the legislative intent as set forth in Section 40-57.1-01, N.D.C.C., it is altogether appropriate that municipalities and the State Board of Equalization negotiate with project operators for the terms of any partial or complete exemption that will be granted to the new industry.

It is lawful for municipalities and the State Board of Equalization to consider in their negotiations any commitment that the project operator may be willing to make to employ North Dakota workers to the extent they are available and qualified, both in the construction and operation phase of the project for which the tax exemption is sought. It is not unlawful for the State Board of Equalization to adopt a policy which requires a municipality to negotiate on behalf of North Dakota workers with any new industry seeking to obtain all or part of the benefits conferred under Chapter 40-57.1, N.D.C.C. The policy cannot require that a potential project operator must employ a certain number or percentage of North Dakota workers, but the policy can require that the municipality negotiate on behalf of North Dakota workers. It could very well be that after the negotiations are completed, the project operator and the municipality will have agreed that there is no need to employ any North Dakota workers. However, the potential project operator may very well be willing to agree to employ North Dakota workers in both the construction and operation phase of the project in exchange for a more complete partial or a full exemption.

The decision of the North Dakota Supreme Court in the case of Southern Valley Grain Dealers Association v. Board of County Commissioners of Richland County, 257 N.W.2d 425 (N.D. 1977), supports this position. The Court in that case upheld a five-year property tax exemption for the project operator. The Court said:

We hold . . . that the action of the State Board of Equalization on May 29, 1975, approving the five-year exemption with the added condition prohibiting direct purchase from farmers was a valid action by that Board; and that the action of the Board of County Commissioners on June 3, 1975, approving the exemption, with the condition attached, was a valid ratification of the five-year tax exemption. 257 N.W.2d 425, 430.

The Court has clearly recognized that a governing body can impose conditions on the granting of a tax exemption as a result of negotiations for a tax exemption.

In the opinion of December 17, 1979, a concern was raised about federal constitutional questions involving the right of a nonresident to pursue a livelihood in the State of North Dakota. While that particular concern could conceivably be raised if the law of North Dakota required the employment of North Dakota workers to the exclusion of nonresidents, it is my opinion that that concern is not an issue in this matter. A policy adopted by the State Board of Equalization directed toward the encouragement of negotiations for employment on behalf of North Dakota workers is, in my opinion, not unconstitutional.

--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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Attorney General