

Office of the Attorney General
State of North Dakota

Opinion No. 82-68

Date Issued: September 28, 1982

Requested by: Robert W. Peterson
State Auditor

--QUESTION PRESENTED--

Whether a vacant lot located in a zoned residential area of a city must be assessed as commercial property for ad valorem taxation purposes.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a vacant lot located in a zoned residential area of a city must be assessed as commercial property for ad valorem taxation purposes.

--ANALYSIS--

Section 57-02-27 of the North Dakota Century Code classifies real property for ad valorem taxation purposes. Section 57-02-27(1) and (3), N.D.C.C., provides for the taxation of residential and commercial property as follows:

57-02-27. PROPERTY TO BE ASSESSED AT A PERCENTAGE OF FULL VALUE--CLASSIFICATION OF PROPERTY--LIMITATION ON ASSESSMENT OF ANNEXED AGRICULTURAL LANDS. All property subject to taxation based on the value thereof shall be assessed as follows:

1. All residential property to be assessed at nine percent of true and full value. If any property is used for both residential and nonresidential purposes, the assessment shall be prorated accordingly.

3. All commercial and railroad property to be assessed at ten percent of true and full value.

For use with respect to the provisions of Chapter 57-02, N.D.C.C., Section 57-02-01(12) and (15), N.D.C.C., defines residential and commercial property as follows:

57-02-01. DEFINITIONS. As used in this title, unless the context or subject matter otherwise requires:

12. 'Residential property' means all property, or portions of property, used by an individual or group of individuals as a dwelling, but not including hotel and motel accommodations required to be licensed under chapter 23-09 nor structures providing living accommodations for four or more separate family units.

15. 'Commercial property' means all property, or portions of property, not included in the above-defined classes of property. (Emphasis supplied.)

When words are defined by a statute, they are to be given that particular meaning. When a statute is not ambiguous, its clear meaning cannot be avoided by pretending to pursue its spirit. Sections 1-02-02, 1-02-03, and 1-02-05, N.D.C.C.

The word 'dwelling' denotes a building used as a settled human abode. 28 C.J.S., Dwelling or Dwelling House, 600. A lot without a building on it cannot be used as a dwelling under this definition. Therefore, a vacant lot does not come within the definition of residential property for ad valorem taxation purposes. A vacant lot in a city is statutorily classified as commercial property for the purpose of locally assessed ad valorem taxes if it does not come within the definition of residential or agricultural property.

Furthermore, in *Signal Oil and Gas Company v. Williams County*, 206 N.W.2d 75 (N.D. 1973), the Supreme Court, in paragraph 5 of the Syllabus, held:

5. Section 176 of the North Dakota Constitution grants to the Legislative Assembly discretion and authority to classify various subjects, including property and persons, for tax purposes. 206 N.W.2d 77.

A review of the history of the legislation which created our present classified ad valorem property tax produces no record of any legislative discussion about the effect of zoning laws upon the classification of property for taxation purposes. It is assumed that the aforesaid classifications and definitions were created and enacted irrespective of the effect zoning laws may have on the use of property.

Section 1-02-27, N.D.C.C., provides:

1-02-27. CONFLICTS ADJUSTED.--If the provisions of any chapter or title conflict with or contravene the provisions of any other chapter or title, the provisions of each chapter or title must prevail as to all matters in question arising thereunder out of the same subject matter.

Also see Section 1-02-07, N.D.C.C., and *Evanson v. Wigen*, 221 N.W.2d 648 (N.D. 1974).

Therefore, to the extent that any zoning law conflicts with the classification provisions of the North Dakota Century Code chapter pertaining to ad valorem taxation, Chapter 57-02, N.D.C.C., the classification provisions must prevail over the zoning laws as to all matters pertaining to ad valorem taxation.

--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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