

Date Issued: May 10, 1983 (AGO 83-19)

Requested by: J. M. Vukelic,
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- QUESTION PRESENTED -

Whether nonapproved private schools are eligible for the property tax exemption provided in of section 57-02-08(6) of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that nonapproved private schools are eligible for the property tax exemption provided for in of section 57-02-08(6), N.D.C.C.

- ANALYSIS -

Section 57-02-08(6), N.D.C.C., provides an exemption from taxation for:

57-02-08. PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation:

* * *

6. All schoolhouses, academies, colleges, institutions of learning, with the books and furniture therein, and the grants attached to such buildings necessary for their proper occupancy, use, and enjoyment and not otherwise used with a view to profit, and all dormitories and boarding halls, including the land upon which they are situated, owned and managed by any religious corporation for education or charitable purposes for the use of students in attendance upon any educational institution, if such dormitories and boarding halls shall not be managed or used for the purpose of making a profit over and above the cost of maintenance and operation.

There is nothing in the language of section 57-02-08(6), N.D.C.C., which requires that approval by the North Dakota Department of Public Instruction is necessary in order for the exemption to apply. The Legislature has in several instances conditioned tax exemptions on meeting approval requirements set by other departments of government. For example, section 57-02-08(8), N.D.C.C., provides for property tax exemption for nursing homes but only if "licensed pursuant to section 23-16-01." Furthermore, section 57-38-01.7, N.D.C.C., provides for an income tax credit for charitable contributions. Subsection 3 of that section specifically defines "nonprofit private institutions of secondary education" as:

. . . only a nonprofit private educational institution located in North Dakota which normally maintains a regular faculty and curriculum approved by the state department of public instruction and which normally has a regularly organized body of students in attendance at

the place where its educational activities are carried on, and which regularly offers education to students in the ninth through the twelfth grades. (Emphasis supplied).

According to C.J.S.:

Where a statute so provides, a private educational institution, in order to be entitled to tax exemption, must have its curricula approved by the state board of education. 84 C.J.S. Taxation section 283, p. 565.

There is no such requirement in section 57-02-08(6), N.D.C.C. If the Legislature had intended to condition the private school exemption on the approval of the Department of Public Instruction, it could have done so.

- 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 questions presented are decided by the courts.

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Attorney General

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