

Office of the Attorney General
State of North Dakota

Opinion No. 83-40

Date Issued: November 3, 1983

Requested by: John S. Lesmeister
State Treasurer

--QUESTION PRESENTED--

Whether the apportionment formula to be used by the state treasurer in apportioning coal severance tax revenue between a coal producing county and a non-coal producing county pursuant to Section 57-62-02(03)(b)(2) of the North Dakota Century Code, includes only the assessed valuations of land, without including the assessed value of structures and improvements.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the apportionment formula to be used by the state treasurer in apportioning coal severance tax revenue between a coal producing county and a non-coal producing county pursuant to Section 57-62-02(03)(b)(2) N.D.C.C., includes only the assessed valuations of land, without including the assessed value of structures and improvements.

--ANALYSIS--

Section 57-62-02(3)(b)(2), N.D.C.C., was amended by Section 1 of House Bill 1289 as enacted by the 1983 Legislative Assembly. 1983 N.D. Sess. Laws 668, § 1. Section 57-62-02(3)(b)(2), N.D.C.C., as published with strike-throughs in Chapter 668 reads as follows:

b. If the tipple of a currently active coal mining operation in a county is within fifteen miles (24.14 kilometers) of another county in which no coal is mined, the revenue apportioned from the coal mining operation according to this subsection shall be allocated, subject to the definitions of terms and the requirements in paragraph 4 as follows:

...

(2) Forty percent shall be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles (24.14 kilometers) of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county

portion shall be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles (24.14 kilometers) of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles (24.14 kilometers) of the tipple of the currently active coal mining operation. It shall be the duty of the county director of tax equalization of the coal-producing county to certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles (24.14 kilometers) of the tipple of the currently active coal mining operation and their assessed valuations.

The 1983 amendment simply gave the responsibility of the revenue distribution to the state treasurer whereas it previously had been the responsibility of the county treasurer of the coal producing county to make the distribution.

The distribution formula remains unchanged since it was enacted by amendment in 1979. 1979 N.D. Sess. Laws 627, § 1.

A specific concern involves the meaning of '. . . the assessed valuation of all quarter sections of land' and with '. . . the combined assessed valuation of all land . . .' as those words are found in the apportionment formula.

In *Morton County v. Henke*, 308 N.W.2d 372 (N.D. 1981), the meaning of the word 'tipple' as it is used in Section 57-62-02(3)(b)(2), N.D.C.C., was litigated. In that opinion, the Supreme Court recognized the following pertinent rules of statutory construction:

(4-6) The primary purpose of statutory construction is to ascertain the intent of the Legislature. *State v. Moore*, 286 N.W.2d 274 (N.D. 1979); *Hughes v. State Farm Mutual Automobile Insurance Co.*, 236 N.W.2d 870 (N.D. 1975). A statute must be considered as a whole with a view toward arriving at the intent of the Legislature. *Apple Creek Township v. City of Bismarck*, 271 N.W.2d 583 (N.D. 1978); *Horst v. Guy*, 219 N.W.2d 153 (N.D. 1974). The Legislature's intent in enacting a statute must first be sought from the language of the statute. *Apple Creek Township v. City of Bismarck*, supra.

(7) In interpreting a statute, words are to be given their plain, ordinary, and commonly understood meaning; and consideration should be given to the ordinary sense of statutory words, the context in which they are used, and the purpose which prompted their enactment. Section 1-02-02, N.D.C.C.; *Weber v. State Farm Mutual Automobile Insurance Co.*, 284 N.W.2d 299 (N.D. 1979).

(8) If a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statute. Section 1-02-05, N.D.C.C.; Barnes County Education Association v. Barnes County Special Education Board, 276 N.W.2d 247 (N.D. 1979). 308 N.W.2d 372, 375-376.

It appears from reading the statute that only assessed valuations of land should be used in the apportionment. Clearly, the Legislative Assembly could have added structures and improvements to the apportionment formula. No discussion of the possible use of the assessed valuations can be found in the relevant legislative committee notes. The formula with respect to the use of assessed values of land only is unambiguous.

Furthermore, it is consistent with the provisions of Section 57-02-34, N.D.C.C., which provides that for ad valorem taxation purposes, land shall be assessed and listed separately from structures and improvements.

Therefore, it is my opinion that the assessed value of structures and improvements should not be included in this apportionment formula.

--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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