

Office of the Attorney General
State of North Dakota

Opinion No. 86-21

Date Issued: June 5, 1986

Requested by: State Board of Equalization

--QUESTION PRESENTED--

Whether a municipality can grant an ad valorem tax exemption for new industry to property which is centrally assessed by the State Board of Equalization.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a municipality cannot grant an ad valorem tax exemption for new industry to property which is centrally assessed by the State Board of Equalization.

--ANALYSIS--

N.D.C.C. Ch. 40-57.1 provides that a municipality may grant a property tax exemption, not exceeding five years, for certain types of new business projects. For purposes of this chapter, 'municipalities' include counties and cities. N.D.C.C. § 40-57.1-02. These grants of exemption are subject to the approval of the State Board of Equalization.

Nothing in the legislative history of N.D.C.C. Ch. 40-57.1 gives any indication that the tax exemption for new industries should be applied to property that is centrally assessed by the State Board of Equalization pursuant to N.D. Const. Art. X, § 4 and N.D.C.C. Ch. 57-06.

Since the tax exemption for new industries was originally enacted in 1969, it has been amended several times, generally for the purpose of limiting the amount and scope of the exemptions. 1973 N.D. Sess. Laws Ch. 341; 1975 N.D. Sess. Laws Ch. 388, § 1; 1983 N.D. Sess. Laws Ch. 467, § 1.

Municipal governments may 'act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority.' County of Stutsman v. State Historical Society, 371 N.W.2d 321, 329 (N.D. 1985). 'In defining [these] powers the rule of strict construction applies.' Roeders v. City of Washburn, 298 N.W.2d 779, 782 (N.D. 1980).

Furthermore, '[i]t is well settled that provisions exempting property from taxation are to be strictly construed; that their operation should not be extended by construction; and that the power and right of the state to tax are presumed and the exemption must be clearly granted.' Evangelical Luth. G. Sam. Soc. v. Board of City Com'rs, 219 N.W.2d 900, 901, (N.D. 1974) (Syllabus para. 2).

Therefore, it my opinion that the Legislature has not authorized a municipality to grant a tax exemption for new industries to property that is centrally assessed by the State Board of Equalization and over which the municipality has no original taxing jurisdiction.

--EFFECT--

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

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