

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-02

Date issued: January 10, 1990

Requested by: Charles J. Peterson
Golden Valley County State's Attorney

- QUESTION PRESENTED -

Whether the tax credit provided for in N. D. C. C. ' 15-27.4-03 applies against the real estate taxes levied on all real property within the district or only on property that is owned by residents.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the tax credit provided for in N. D. C. C. ' 15-27.4-03 applies against the real estate taxes levied on all real property within the district.

- ANALYSIS -

N. D. C. C. ' 15-27.4-03 provides in pertinent part:

The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for the residents of the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution

On its face it appears that only persons residing in the district are entitled to a tax credit because the statute refers to "residents." However, the legislative history reveals that the Legislature intended to allow a tax credit regardless of residence of the property owner. Hearing on H. 1002 Before the House Appropriations Subcomm. on Education and Environment, 51st N. D. Leg. (April 14, 1989) (statement of Al Koppang).

In enacting a statute the Legislature is deemed to have considered pertinent court rulings. A statute which allows a benefit to a resident and denies it to a non-resident based solely on residency is generally unconstitutional. See Metropolitan Life Insurance Co. v. Ward, 470 U. S. 878 (1985) (holding tax scheme favoring residents solely because of residency unconstitutional); Metropolitan Life Ins. Co. v. Commissioner of Dept. of Ins., 373 N. W. 2d 399 (N. D. 1985) (holding gross premiums tax on foreign insurers, but not on domestic insurers, unconstitutional).

The Legislature is presumed to have intended a result which is constitutional. Since the consequence of construing the tax credit to apply only to "residents" may result in the statute being declared unconstitutional, it is reasonable to conclude the Legislature intended the tax credit to apply against the real estate taxes levied on all real property on which a tax has been levied regardless of the residency of the property owner. See N. D. C. C. " 1-02-38(1) and 1-02-39(5).

Finally, when an error preventing the fulfilling of legislative intent exists on the face of a statute, the courts will correct the error to achieve the Legislature's intent. City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Considering the Legislature's intent, it appears the Legislature made an error when it used the term "resident."

In view of the statute's legislative history, the consequences of different constructions, the presumption of constitutionality, and the North Dakota Supreme Court's statement that it will correct the misuse of words in statutes, it is my opinion that, despite the use of the word "residents," the credit provided for in N. D. C. C. ' 15-27.4-03 was meant to apply against the real estate taxes levied on real property within the dissolved district notwithstanding the residence of the property owner.

- 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.

Nicholas J. Spaeth
Attorney General

Assisted by: Rosellen M Sand
Assistant Attorney General

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