

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-F-05

Date issued: June 21, 1995

Requested by: Charlie Whitman, Bismarck City Attorney

- QUESTION PRESENTED -

Whether the tax exemptions in N.D.C.C. § 57-02-08(7) and (9) for property used for "public worship" or "religious services" unconstitutionally restrict the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious "purposes."

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious purposes is supplemented rather than restricted by the exemptions in N.D.C.C. § 57-02-08(7) and (9) because Article X, Section 5 is self-executing except for the savings provision in the last sentence, which does not apply to that exemption.

- ANALYSIS -

In enacting a statute, it is presumed that the Legislature intended to comply with the North Dakota and United States constitutions, and any doubt must be resolved in favor of the statute's validity. N.D.C.C. § 1-02-38(1); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 357 (N.D. 1945). This presumption is conclusive unless the statute clearly contravenes the state or federal constitution. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987). Furthermore, a statute may be declared unconstitutional only upon the concurrence of four out of five justices of the North Dakota Supreme Court. N.D. Const. art VI, § 4. The opinion of an Attorney General is not binding on the judiciary. Therefore, it has been this office's policy to refrain from calling into question the constitutionality of a statute unless it is clearly and patently unconstitutional.

"All property in this state is subject to taxation unless expressly exempted by law." N.D.C.C. § 57-02-03. Taxpayers

have the burden of proving that their property is exempt from tax. Y.M.C.A. of N.D.S.U. v. Bd. of County Comm'rs, Cass County, 198 N.W.2d 241, 244 (N.D. 1972). Tax exemptions are strictly construed against taxpayers, but courts should liberally construe the term "religious" to fulfill the intent of constitutional and statutory provisions. Lutheran Campus Council v. Bd. of County Comm'rs, Ward County, 174 N.W.2d 362, 365-66 (N.D. 1970).

Your letter specifically concerns property used exclusively for administrative support of religious organizations rather than religious worship services or as a residence for clergy. Article X, Section 5 of the North Dakota Constitution (formerly Article X, Section 176) currently provides in part:

[P]roperty used exclusively for schools, religious, cemetery, charitable, or other public purposes shall be exempt from taxation. . . . Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

(Emphasis added). Similar constitutional exemptions have been interpreted to include property used as the administrative offices of a religious organization, because these offices are property "incidental to and reasonably necessary for the accomplishment" of the organization's religious purposes. Bd. of Trustees of the Kansas E. Conference of the United Methodist Church v. Cogswell, 473 P.2d 1, 11 (Kan. 1970)(quotation omitted); Christian Reformed Church in North America v. City of Grand Rapids, 303 N.W.2d 913, 919 (Mich. Ct. App. 1981). See also 1981 N.D. Op. Att'y Gen. 81-13 at 34 (property must be reasonably necessary for religious purposes). Guided by these interpretations of similar constitutional exemptions, it is my opinion that the administrative offices of a religious organization are property used for religious purposes under Article X, Section 5 of the North Dakota Constitution. Whether the property you describe is so used, and whether that use is exclusive, are questions of fact that the City must determine.

Apparently anticipating this interpretation of Article X, Section 5, you ask whether it conflicts with N.D.C.C. § 57-02-08(7) and (9), which exempt from tax:

All houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected, and any dwellings belonging to religious

organizations intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church, together with the lots upon which the same are situated.

. . . .

All real property . . . owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling . . . used for the residence of the bishop, priest, rector, or other minister in charge of services, must be deemed to be property used exclusively for religious services, and exempt from taxation

All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.

According to your letter, the administrative offices in this case are not used for public worship services or as a residence for clergy, so the exemption in subsection 7 does not apply. See Christian Church of Ohio v. Limbach, 560 N.E.2d 199, 200 (Ohio 1990)(administrative offices do not facilitate public worship services). Thus, the question remaining under N.D.C.C. § 57-02-08 is whether these offices are "a building used for the religious services of the organization" under subsection 9.

The phrase "religious services" is not defined in N.D.C.C. § 57-02-08. Words and phrases not defined in a statute are to be given their plain and ordinary meaning. N.D.C.C. § 1-02-02. There are several meanings of "service," but when combined with the term "religious," the term could mean either "[a]cts of devotion to God," or "[a] religious rite" or ceremony. The American Heritage Dictionary 1121 (2d. coll. ed. 1991). This phrase must also be "construed according to the context" of the statute. N.D.C.C. § 1-02-03. As used in subsection 9, the phrase "religious services" refers not to a private act of devotion, but to a religious event presided over by a member of the clergy or other minister and attended by people who may use a parking lot.

Statutes should be construed to give meaning to every part,

and as this office has noted, there is "a great similarity between" subsections 7 and 9. 1970 Op. Att'y Gen. 394, 398. Nevertheless, when viewed in context, the meaning of "religious services" is reasonably clear. Thus, it is my opinion that the phrase "religious services" is limited to religious "rites" or worship services. This interpretation is consistent with North Dakota Conference Association of Seventh-Day Adventists v. Bd. of County Comm'rs, Stutsman County, 234 N.W.2d 912, 916 (N.D. 1975), in which exempt property was used as residences for ordained ministers who presided over religious worship services in area congregations.

Although subsection 9 does not directly exempt from tax all property used for religious purposes, the final sentence in that subsection could be interpreted as doing so indirectly by making any such taxes void. Until 1989, that sentence voided all taxes on "any such property, while the same was so used for religious purposes." See 1989 N.D. Sess. Laws ch. 690, § 1 (emphasis added). This sentence incorporated by reference the property and uses previously discussed in the subsection. The underlined terms were deleted in 1989, but "such" was replaced with "of the," so the sentence continues to apply only to the property and uses described in the subsection.

As your letter and the above analysis illustrate, property can be exempt from tax under Article X, Section 5 of the North Dakota Constitution but not exempt from tax under N.D.C.C. § 57-02-08(7) and (9). Property can also be exempt under these subsections but not Article X, Section 5. See 1981 N.D. Op. Att'y Gen. 81-81. A constitutional provision normally prevails in a conflict with a statute. Article X, Section 5, quoted above, is self-executing except for the savings provision in the last sentence. Lutheran Campus Council, 174 N.W.2d at 367 (Teigen, C.J., concurring specially); 1970 Op. Att'y Gen. at 395. Thus, unless this savings clause applies, property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature. This office has previously reached similar conclusions. See 1994 N.D. Op. Att'y Gen. 94-07 (property used for charitable or public purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08); 1981 N.D. Op. Att'y Gen. 81-13 (excess of two acres used exclusively for religious purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08(9)).

Before the current constitutional exemption for property used exclusively for religious purposes was adopted in 1918, former

Article XI, Section 176 of the North Dakota Constitution provided that "the legislative assembly shall by a general law exempt from taxation property used exclusively for . . . religious . . . purposes." See 1913 N.D. Sess. Laws ch. 130 (emphasis added). The predecessor to N.D.C.C. § 57-02-08(7) in effect in 1918 exempted from tax "all houses used exclusively for public worship and the lots and parts of lots upon which such houses are erected." Compiled Laws of North Dakota of 1913, § 2078; 1907 N.D. Sess. Laws ch. 218, § 1. The predecessor to N.D.C.C. § 57-02-08(9) in effect at the same time provided:

Property used exclusively for religious purposes is exempt from taxation as hereinafter provided. All real property, not exceeding one acre in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling and usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consist of one tract or more. . . .

Compiled Laws of North Dakota of 1913, § 2079 (emphasis added); 1901 N.D. Sess. Laws ch. 160. Thus, as with current law, these statutes in 1918 did not exempt all property used exclusively for religious purposes, but only property used for public worship or religious services that furthered those purposes. Indeed, by incorporating the phrase "religious purposes" at the beginning of the subsection, and then restricting the exemption to property used only for "religious services," the Legislature appears to have purposely restricted the exemption required by the constitution.

Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature. Engstad v. Grand Forks County, 84 N.W. 577, 578 (N.D. 1900). In Engstad, the Legislature had enacted a tax exemption only for property belonging to charitable institutions, but Article XI, Section 176 required the Legislature to exempt from tax all property used for charitable purposes, whether owned by institutions or private persons. The Supreme Court concluded that although the statutory exemption was narrower than mandated by the constitution, it was nevertheless valid. Engstad, 84 N.W. at

579. This decision was limited to property used for charitable purposes. However, the same rationale would have applied to property used for religious purposes. Therefore, although the statutory exemptions were narrower than mandated by the constitution, it appears that property used for religious purposes but not public worship or religious services was not exempt from tax when the current constitutional exemption was adopted in 1918. As a result, if the savings clause applied to the 1918 amendment, such property would remain nonexempt today unless otherwise provided by law.

This savings clause "freezes the exemptions and property subject to tax as they existed upon the adoption of the amended version of [former] § 176 until the Legislature provides for other methods of taxation of exemptions." 1970 N.D. Op. Att'y Gen. at 395. This provision was first added to the constitution in 1914 and retained when the current exemption was added to former Article XI, Section 176 in 1918 by initiated measure. See 1919 N.D. Sess. Laws ch. 90; 1913 N.D. Sess. Laws ch. 103. Although this savings provision was retained by the 1918 amendment, its text refers to the changes caused by "this amendment," which would continue to be the 1914 amendment. It is therefore my opinion that the savings clause in Article X, Section 5 of the North Dakota Constitution does not apply to the amendments adopted in 1918, which would include the current exemption for property used exclusively for religious purposes.

This conclusion is supported by the changes made to this section by the 1918 amendment. With overstrikes through the deleted text and the new text underlined, former Article XI, Section 176 as amended in 1918 provided:

Taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only, but the legislature may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. The property of the United States, and of the state, county and municipal corporations, shall be exempt from taxation, and the legislative assembly shall by a general law exempt from taxation property used exclusively for schools,

~~religious, cemetery, charitable or other public purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; provided, shall be exempt from taxation. Except as restricted by this article, the legislature may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force, in the same manner and to the same extent, until otherwise provided by statute.~~

Compare 1919 N.D. Sess. Laws ch. 90 with 1913 N.D. Sess. Laws ch. 103.

Because this amendment was adopted as an initiated measure, there is no legislative history that can be used to determine its purpose. However, as seen from the language deleted and added by the amendment, it made three substantive changes. First, it authorized the Legislature to exempt personal property from taxation. Second, it affirmed the general authority of the Legislature to raise revenue and fix the location of property. Finally, and most important for the question you ask, this amendment made the exemptions in that section self-executing rather than a mandate to the Legislature, effectively overruling the Supreme Court's decision in Engstad which had been affirmed just two years earlier in State ex rel Linde v. Packard, 160 N.W. 150, 156 (N.D. 1916).

The clear purpose of making these exemptions self-executing was to remove the discretion of the Legislature under Engstad to restrict exemptions that are only mandated by the constitution. It would defeat this purpose to conclude that the amendment's deliberate removal of the Legislature's discretion was ineffective under the savings provision unless the Legislature "otherwise provided by statute." The only way to give effect to this change is to follow the plain meaning of the savings provision and conclude that it only applies to the 1914 amendment.

In summary, Article X, Section 5 of the North Dakota Constitution is self-executing except for the savings provision in the last sentence, which does not apply to the exemption in that section for property used exclusively for religious purposes. Therefore, because this exemption is effective regardless of statutory authority, subsections (7) and (9) of N.D.C.C. § 57-02-08 supplement rather than restrict

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that exemption.

- 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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