

OPINION
45-284

April 26, 1945 (OPINION)

TAXABILITY OF FARM

RE: Real Property Within City Limits

Your letter of April twenty-sixth addressed to the Attorney General has been received and contents noted.

You state that the opinions issued out of this office on April 17, 1945, to Carl Nelson of Ryder, N. Dak., seems to be in conflict with opinions issued by the former administration with reference to the taxation of farm property situated within corporate limits of villages and cities.

We do not believe that there is a conflict. Each case must necessarily stand on its own state of facts. In an opinion written on February 21, 1944, of which I believe your office has a copy (found on page 109, Attorney General's Report, 1942-44), we stated that, "This office has held on several occasions that where a parcel of land is occupied and used as a farm for agricultural purposes and it has buildings and improvements are exempt from taxation under said chapter 230, notwithstanding the fact that said tract or parcel of land is within an incorporated city or village. In our opinion the test is not whether such land is within an incorporated municipality, but whether it is used mainly for agricultural purposes, so as to bring it within the purview of said chapter 230."

You will note from the facts as set forth in that opinion that the property involved consisted of 9.40 acres and in one corner of the tract were located a dwelling and some other buildings used as farm structures, and had been so used for forty years or more.

In the case you present the party in question has a barn which is situated within the village limits. There is no house in connection with the barn but the man has farm lands surrounding that portion of the village. He uses the barn in connection with farming purposes.

The writer of this letter is still of the opinion that if the facts are as stated and this barn is used only in connection with the operation of the farm, the fact that it may be within the city limits does not change the situation. Subdivision 15 of section 57-0208 provides that all farm structures and improvements located on agricultural lands are exempt from taxation. The test, therefore, is not whether the property should happen to be within the limits of a city or village, but the test is whether or not the property involved is farm structures and improvements located on agricultural lands.

In the opinion written to Mr. Nelson of Ryder, the facts were different. The facts in the Nelson case show that the house sought to be exempt from taxation was owned by the wife and was situated within the village of Ryder, and although it was occupied occasionally by the farmer, nevertheless, it was not a part of the farm.

NELS G. JOHNSON
Attorney General