

OPINION
46-30

March 13, 1946(OPINION)

BANK OF NORTH DAKOTA

RE: Exempt from Documentary Tax

I have reviewed the memorandum brief and opinion prepared by Robert A. Birdzell, special assistant attorney general, attached hereto, in which he holds that the bank is not required to affix documentary revenue stamps on deeds, bonds, and other documents issued or transferred by the bank. It is pointed out in Mr. Birdzell's memorandum that section 1808, Title 26, U.S.C., provides:

There shall not be taxed under this chapter any bond, note, or other instrument, issued by the United States, or by any foreign government, or by any state, territory, or the District of Columbia, or local sub division thereof, or municipal or other corporation exercising the taxing power; . . ."

Although the Bank of North Dakota is not a political subdivision of the state nor a municipal corporation exercising taxing power, it is an agency or instrumentality through which the state functions. In the case of Green v. Frazier, 44 N.D. 395, 176 N.W. 11, the supreme court of North Dakota held that the bank functions "as an agency of the sovereign power of the state, in like manner as the treasurer of North Dakota." (44 N.D., page 413).

I, therefore, agree with Mr. Birdzell that the Bank of North Dakota is not subject to the federal documentary stamp tax.

Subdivision A-(2) of section 3481 of the U.S.C., provides, however, that:

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the commissioner, with the approval of the secretary (secretary of treasury), may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the commissioner with the approval of the secretary, is registered with the commissioner - - -."

In view of this provision, I suggest that the manager of the Bank of North Dakota notify the secretary of the treasury, and also the Commissioner of Internal Revenue, that under the provisions of section 1808, Title 26, U.S.C., the Bank of North Dakota is exempt from the documentary tax. Then if the secretary, or the commissioner, want to make a legal issue of the matter, they can do so. But they cannot say that the stamp tax has been willfully evaded, and that the treasury department has had no notice of the exemption claimed by the manager of the Bank of North Dakota. A careful record should be kept of deeds, bond, etc., issued.

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Attorney General