

**OPINION
48-134**

December 8, 1948 (OPINION)

MOTOR VEHICLES

RE: Soil Conservation District

This will acknowledge your letter of November 30th, in which you state that a question has been raised as to whether or not a soil conservation district is entitled to register a motor vehicle on an exempt basis as provided by section 39-0421 of the 1947 Supplement. Under that section, a motor vehicle owned and operated by this state or any of its subdivisions is exempt from the regular license fees provided by law, except the payment of \$1.00 for each set of number plats, which is charged to cover the cost of the plates and registration of the vehicle. The questions raised is not without difficulty.

Section 176 of the North Dakota Constitution provides in part as follows: "The property of the United States and of the state, county and municipal corporations and property used exclusively for schools, religious, cemetery, charitable or other public purposes, shall be exempt from taxation * * *."

Section 39-0466 provides: "The taxes or fees provided for in this chapter shall be in lieu of all other taxes or fees upon such motor vehicles either state or local."

This section evidences the fact that it was the legislative intent that the license fee upon a motor vehicle be in lieu of taxes. So the license fee in effect is a tax upon the vehicle. Section 39-0421, as amended by chapter 271 of the 1947 session laws and now contained in the 1947 supplement under the same number, provides "all motor vehicles owned and operated by this state or any of its subdivisions shall be required to register and display number plates on such vehicles. Such vehicles shall be exempt from the payment of all registration fees provided for in this chapter, except that \$1.00 for each set of plates issued, to cover the costs of such plates and registration. * * *" This portion of the 1947 statute is identical with the statute as passed by the 1927 Legislature, chapter 179, section 28.

In 1937 the Legislature passed a comprehensive statute setting up the organization of soil conservation districts, chapter 4-22 of the North Dakota Revised Code of 1943.

Section 4-2201 states the policy of the law as follows: "It shall be the policy of this state and within the scope of this chapter to provide for the conservation of the soil and soil resources of this state and for the control and prevention of soil erosion, and to preserve the state's natural resources, control floods, prevent impairment of wild life, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state." From the above language, it appears that it was the legislative intent to create or permit the organization of

soil conservation districts in the interest of the public and for the public purposes set forth, and generally to protect and promote the health, safety and general welfare of the people of the state.

Section 4-2202, (5) defines a soil conservation district as follows: " 'District' or 'soil conservation district' means a governmental subdivision of this state and a public body, corporate and politic, organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth." This is again referred to in section 4-2213 which states that the district shall become a governmental subdivision of the state and a body corporate and politic upon certification by the committee to the secretary of state as provided in section 4-2212.

Section 4-2226 enumerates the powers and duties of soil conservation districts and the supervisors. Generally, in addition to specific powers therein enumerated, the statute says "A soil conservation district may exercise the public powers ordinarily exercised by a governmental subdivision of the state, ***." The statute then lists fifteen specific powers of a soil conservation district. Among them, subdivision (10) is the right of the district to sue and be sued; (11) to have a seal, which seal shall be noticed judicially; (12) to have perpetual succession unless terminated as hereinafter provided.

While it is true that a soil conservation district does not have any taxing power, it seems clear from the statutes quoted that it was created for a public purpose and that it was denominated and classified by the Legislature as a governmental subdivision of the state or a body corporate and politic for the purpose of aiding the district in the very important work of providing for the conservation of the soil and the soil resources of the state, the prevention of erosion, the preservation of the state's natural resources, control of floods, prevent the impairment of dams and reservoirs, assist in maintaining the navigability of rivers, the preservation of wildlife, the protection of the tax base and protection of public lands and generally to do anything that would promote the health, safety and general welfare of the state and its people. The enumerated objectives of the statute permitting the organization of soil conservation districts presents an undoubted intent of the Legislature to allow their creation for vital and important public purposes.

The question then arises whether the Legislature intended that property owned by the district should come within the terms of the constitutional exemption, section 176, and the specific exemption of motor vehicles as contained in section 39-0421 of the 1947 supplement. It is true that the soil conservation law was passed by the Legislature ten years later than the statute providing for exemption to other municipalities, the state or other governmental subdivisions, from the payment of license fees on motor vehicles, except for the \$1.00. However, it is true that the soil conservation law evidences an undoubted intent of the Legislature to aid and assist soil conservation districts in accomplishing the public purposes set up as the objectives of their creation.

While it might be argued that since a soil conservation district has

no taxing power and is organized for an economic purpose which benefits the membership directly, yet, it must be recognized that it does benefit the public as a whole, and the legislative scope of the law as pronounced in the statute recognizes that the public, generally speaking, is a benefactor from soil conservation practices, separate and apart from the benefits that accrue to the individual members of the soil conservation district.

It is true that generally speaking, the grant of exemption from taxation is never presumed, 61 C.J. 391, paragraph 395, and it is further true that a constitutional or statutory grant of exemption from taxation is strictly construed, 61 C.J. 393, paragraph 396, for cases see Note 77. See also 51 American Jurisprudence, Page 515, paragraph 512, which states the rules as follows: "The principle that tax exemption laws are strictly construed against the exemption is especially applicable to contracts granting exemption from taxation." Yet, if the legislative intent, either expressly or by the strongest type of implication, indicates that such was the intent of the legislature, the law granting the exemption must be so construed.

Here the Legislature has not only stated that a soil conservation district is a governmental subdivision, but has given it, by specific statute, the right to exercise public powers ordinarily exercised by a governmental subdivision of the state, and has given it perpetual succession unless its organization is terminated as provided in chapter 4-22 of the North Dakota Revised Code of 1943. These things and the general scope of the statute and its announced objectives indicate a clear and unequivocal legislative intent to put a soil conservation district on the same basis as any municipal corporation or governmental subdivision of the state, and we must presume from the unequivocal language in that respect, when the law was enacted permitting the creation of soil conservation districts, that the Legislature had in mind the constitutional provision allowing exemption from taxation, and also had in mind section 39-0421 of the Motor Vehicle Code.

While it might be argued that to allow a soil conservation district to operate motor vehicles upon public highways of this state without the payment of the license fee charged to individuals amounts to granting immunity to the membership of the district from taxation, nevertheless, since there is a direct relationship between the benefits derived by the individual members of the soil conservation districts and the general public, the Legislature undoubtedly intended to facilitate and encourage the practices ordinarily performed by a soil conservation district which would be beneficial to the public as a whole and on that basis intended to put such district on exactly the same basis for taxation purposes as any township, village, city or county in this state, and the state itself.

It is, therefore, my opinion that the legislative intent is so clear and unequivocal that we must reach the conclusion that a soil conservation district comes within the terms of section 39-0421 of the 1947 Supplement, and is entitled to register its motor vehicles as provided therein, the same as any other governmental subdivision of the state.

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