

OPINION
58-262

September 12, 1958 (OPINION)

TAXATION

RE: General Property Assessment - Exempt Property - School Land

This is in reply to your letter requesting an opinion of this office as to whether or not school land located in a flood control district may be assessed for benefits accruing from construction and maintenance of irrigation facilities.

Subdivision 2 of Section 57-0208 of the 1943 N.D.R.C. provides that "all property, real and personal, owned by the State shall be exempt from taxation but no land contracted to be sold shall be exempt."

Section 61-1222 of the N.D.R.C. of 1943 provides: "The board of irrigation shall assess the percentage of the cost of constructing and maintaining the flood irrigation project incurred by the owners of land affected thereby which any lot, piece or parcel of land shall be liable to pay by reason of the benefits accruing, either directly or indirectly by reason of the construction of such project."

It is my opinion that the word "owners" in Section 61-1222 refers to private parties holding the equitable or legal title to land in a flood irrigation district. It is my view that school land, until sold by the State under contract for deed, or legally transferred, is not subject to taxation and may not be assessed for benefits. But when school land is sold under contract, the purchaser becomes the equitable owner and the land becomes subject to taxation, including special assessments. It is my opinion that school land, until sold by the State, cannot be burdened either with general taxes or special assessments.

In the case of Erickson v. Cass County, 11 N.D. 494, 92 N.W. 841, the Supreme Court held that lands granted by the United States for schools are held in trust and are not subject to taxation for benefits arising from the construction of a drain." And in McHenry et al v. Brett, 9 N.D. 68, 81 N.W. 65, the Supreme Court said that a tax which is levied upon property which is exempt is void.

If special assessments could be assessed and accrued until school land is offered for sale, such accrued special assessments would constitute a lien which would have to be assumed by the purchasers. Such an encumbrance would limit the number of bidders for the land and would limit the amount offered.

In conclusion, it is my opinion that school land may not be assessed for benefits until transferred to private parties.

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