

17.0934.03000

FISCAL NOTE STATEMENT

House Bill or Resolution No. HB 1424

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

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2017 HOUSE FINANCE AND TAXATION

HB 1424

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1424
1/31/2017
27645

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill related to the property tax exemption for property of churches.

Minutes:

Attachment 1-11

Chairman Headland: Opened hearing on HB 1424.

Representative Kim Koppelman: Introduced bill. Distributed a proposed amendment 17.0934.02002. See attachment #1. Also distributed written testimony. See attachment #2. Distributed picture of Shiloh Perimeter Landscape. See attachment #3. Distributed a letter from John Walstad. See attachment #4. Distributed two additional letters from the Attorney General, Article X, and a letter from Bill and Gail Biby. See attachments 5, 6, and 7. Ended testimony at 22.03.

Chairman Headland: I feel your frustration and I feel it alongside of you. It seems that we have to address this issue every session and it's hard to understand why.

Representative Kim Koppelman: I appreciate that. Last time the house got it right and they did what this bill was supposed to do and even made it stronger than how I introduced it which I commend your committee for. The senate felt it wasn't the right approach so they increased the acreage limit from two acres to five acres. That helped some churches where that limit dropped them out of the mix but it was still seen as the acreage. The only way to solve it is to get that acreage referenced out altogether and clarify how this should work.

Chairman Headland: Is that what happened in this particular case?

Representative Kim Koppelman: When part of the land was sold off and the acreage increased the church was finally out of that window.

Chairman Headland: In this drawing it seated the five additional?

Representative Kim Koppelman: That was from the initial bill so that was maybe when the two acres was in place. It could very easily exceed depending on the circumstance.

Representative Ertelt: You referenced the possibility of lawsuits if the law is not changed. Are you aware of any lawsuits that have been brought by churches against political subdivisions?

Representative Kim Koppelman: I am not. I have encouraged some people to wait. Just yesterday I had someone approach me saying they should just sue. I encouraged them to wait and see if we could solve this legislatively. I hope that doesn't happen but there are people ready to go if we don't.

Representative Steiner: I would imagine the acreage is so there is a line around the property so the assessor knows it is nontaxable. If you were to take that same scenario as the school and a church was to say maybe someday, we'll be a very large church and school so we're going to buy 100 acres or 1,000 acres and we're going to rent it out to a farmer until 30 years from now when we decide to expand. I would imagine the acreage was some way of defining it's your spot you live on today.

Representative Kim Koppelman: Some may make the argument to say that the constitution says if the property was used for religious purposes of the church then that should be nontaxable. I'm not making that argument, in fact, the bill does just the opposite. The bill says that if the property is used for religious purpose and not used for a profit then it's not taxable. If this bill passes, then I believe that would be taxed. I'm just trying to get the definitions clear.

Representative B. Koppelman: One of the examples you gave is in my district. I believe a church that purchases the property has either a parochial preschool or school. If it was a daycare or a school that charges tuition does your bill, make sure those are not taxed as though it would be if you were renting office space in an office building?

Representative Kim Koppelman: That is something you should probably take a look at. Some churches even have bookstores. Maybe there is a way to clarify that in language that if its within that building and they're doing something to offset the costs. Be careful with definitions as we've learned.

Chairman Headland: Are there any other questions? If there support for HB 1424?

Pastor John Boustead, Bismarck: Distributed testimony in support. See attachment #8. Ended testimony at 31:20. Nonprofit organizations, like a church, are regulated by our activity by the Internal Revenue Service. They scope us and make certain the activity of our church is in fact for church purposes. We have our bylaws that are filed with the state of North Dakota that keep us within the parameters of 100% church business. Our job as churches is to advance the gospel message of Jesus Christ with every single dollar made available to the church as possible and not to use that money for tax dollars. I believe our forefathers saw it that way. I will ask for mercy from the full committee here and appreciate the fact that we want to be able to use all of our money to advance the gospel.

Representative Hogan: Has the county or state in anyway said you weren't eligible with your small church?

Pastor John Boustead: We have not had any trouble so far. Yearly we go to the assessor and fill out forms then each year we find out if we get to be tax exempt for another year. I don't think it should matter to any of us whether it's a one-acre property or 100-acre property. As long as every single dollar that is coming into the entity is used for the purpose written up in the bylaws of the tax exempt corporation. Our bylaws regulate us and keep us honest relative to using those dollars whether its funding for school or funding for churches. The IRS watches us for that.

Chairman Headland: Further testimony in support?

Randy Jaspers, Pastor in Jamestown: Distributed testimony. See attachment #9. Ended testimony at 38:20.

Chairman Headland: Are there any questions?

Representative Ertelt: Were you paying taxes on the land you rented out?

Pastor Randy Jaspers: Yes. We bought it from an entity and the farmer was renting it from that entity. We continued to rent it to that same farmer so during that period of time we paid property tax on that piece of ground until such time we could begin to put footings in the ground. It's fairly clear that if a church uses other property or has property they use for a profit not connected to their work at that time then they have to pay property tax. The specials themselves are going to eat you up.

Chairman Headland: Is there further testimony in support?

Christopher Dodson, North Dakota Catholic Conference: We need to get this clarified. Some church pastors are great at knowing what tax law is and what the constitution says but a lot of them are not. They may not even call the Diocese until there is a problem. We rely on the state to do the right thing and know what is allowed in the constitution. As assessor may change and suddenly the property is taxed when it wasn't before. We are trying to be good stewards in planning ahead with very limited funds from your parishioners and members of congregations. Or it happens the other way when they say they've been taxing you for years when they shouldn't have been but they are not giving that money back. That happens with cemeteries. Cemeteries are not to be taxed but we are still getting taxed for them. This bill is the best clarification I've seen and I think it needs to get passed. The IRS watches us very carefully. If property is used for any profit it has to be reported as unrelated business income. If it's not for profit, then it is for religious purpose.

Representative Hogan: Do you think in section C of the bill they could take the money raised from the farm and designate it for church use then claim the land as not required to pay property tax?

Christopher Dodson: My understanding of the bill's intent is there will be a tax for that time period. We can't own farm land under the corporate farm law.

Representative Schobinger: Does the potential exist for a wealthy radical could buy up a 100 acres and take it to a mosque then the property would be tax exempt under this bill?

Christopher Dodson: I believe it depends on how that extra property is used.

Chairman Headland: Further testimony in support?

Marc Eidaval, Pastor in Bismarck: I am concerned about section C in the bill. I believe there needs to be clarification as to what exactly is taxed. If we purchased a building, we would need another entity to lease out to or help pay the bill. I am concerned then that it will be considered for profit and we would be taxed even though the money is being utilized to support and help fund the church and help us pay the bill on a large priced building. Special assessments are already through the roof.

Chairman Headland: Wouldn't you be able to build the cost of that property tax into your lease?

Marc Eidaval: That is a possibility. Many churches will lease out to other nonprofits or smaller daycares. It becomes a burden to find one who can lease that property. Many times when you're leasing a property as a church you have to use that same portion of the facility during your time so it's a shared effort with who you're leasing to.

Chairman Headland: I certainly understand your point. Further testimony in support? Is there

Bill Wocken, North Dakota League of Cities: Distributed testimony. See attachment #10. Ended testimony at 50:07.

Chairman Headland: I guess there is a difference of opinion here in what's being asked.

Representative Ertelt: You state that two acres is a generous lot for residents. In your estimation is the current law at five additional acres larger than what the cities would like to see now?

Bill Wocken: The cities are comfortable with the exemptions that are in place at this time. Although it is generous it puts a test to the limit of activity. In a rural area two acres would be reasonable. In an urban area more like a third of an acre. We would be happy to stay with that exemption.

Chairman Headland: Further opposition?

Donnell Preskey, Association of Counties: Neutral testimony. When it comes to churches that have large acreage and when they decide to sell part of that land there needs to be clarity on how that should be dealt with as far as the property taxes. There was an incident in one of our counties where a church bought land, platted it into a number of lots, sold the lots for commercial and residential purposes, and built a church. The church sold all the lots except for the lot the church was built on. We would like to see some clarification on what the legislature's intent is on that property.

Chairman Headland: So it isn't perfectly clear to everybody that those lots sold for residential housing are not to be put on the tax rolls?

Donnell Preskey: This is the confusion that I'm getting from our county folks.

Chairman Headland: Interesting. Are there any questions? Is there further testimony? We will close the hearing on HB 1424.

Additional testimony submitted by Steve Smith, Prairie Heights, but not present at the hearing. See attachment #11.

2017 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1424
2/7/2017
27991

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Bruckner

Explanation or reason for introduction of bill/resolution:

A bill related to the property tax exemption for property of churches.

Minutes:

Attachment #1

Vice Chairman Dockter: Does anyone have any information on this bill? Is anyone getting amendments?

Representative B. Koppelman: There is an amendment to hand out and I believe it is ready for action.

Vice Chairman Dockter: You can hand them out but we'll probably wait until Chairman Headland returns. You can hand those out now and the committee can review.

Representative B. Koppelman: Distributed proposed amendment 17.0934.02004. See attachment #1. There was a different amendment distributed 1-31-17 amendment 17.0934.02002. This was designed as a substitute for amendment .2002. The difference between these two amendments is where it says page two, line two, it talks about inserting the language "earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection." This bill was saying in the same phrase in the constitution in which schools are included, they are nontaxable entities for purpose of property tax and other things. Churches are also listed in that same phrase. The suggestion if we were to leave the constitution in context it would have intended the two have similar treatment. Currently, school districts pay no property tax on anything they own and that includes farmland they own that they might build on someday among many other things. This bill doesn't go quite as far as that. This bill says any property you have that isn't income producing property is not taxable. To clarify that is why this amendment says what it says. The amendment allows for the church bake sale, the church bookstore, and such to not cause the church to become taxable under this provision. The rest of the amendment was already explained by the bill sponsor.

Representative Grueneich: In a lot of cases people will donate quarters of land and in most cases it's farmland. Where does that income fall in this bill?

Representative B. Koppelman: Let's say the church was donated a quarter of land and it was their intention to build on it someday then I don't believe that land would be taxable unless they were gaining a profit off of it. If they were renting the land out to a farmer who was farming it and they were making income off of that then that land would be taxable. They want to make sure that any operation on the actual church who happens to bring in money in support of the ministry but not as a profiting venture is not taxed.

Representative Hogan: If the profits from that farm operation went to the church then wouldn't that make it eligible for tax exempt?

Representative B. Koppelman: I'm not sure it would be exempt the way this bill is written. I think the constitution would have exempted anything they own. Any income a church makes from rent, donation, or any other way you would assume is going to go back to their ministry. I think this bill is limiting its scope. In the senate last session, the bill they passed allowed more to be taxed than what was intended.

Representative Hogan: I believe in terms of fairness if they are for profit or they should be taxed so that it doesn't unduly burden other farmers who are taxing on the same land.

Representative Olson: The proposed amendment on page two, line two it requires the property be used for religious purposes. A bake sale and things like that isn't a religious purpose but the funds raised are for religious purposes. What would prevent a church from also renting out farmland and getting income from the rented farmland? Technically, that would be just as exempt from taxation as would having a bake sale or anything on any kind of property.

Representative B. Koppelman: If you look at the bill in context and go to page one, line twenty-two. This entire section of law is describing the activities of the church and the land in what they own. On line 22 if you look at c you read that with the context of the amendment then any real property owned by a religious corporation or organization and used to further their religious purposes. The fact that it is owned by the religious corporation is that land specifically used to further the purpose. You could say the income is used to further the purpose but the land itself is not. Language in the original amendment on page two, line six says if the validity of the assessment is in question the assessor has the burden of providing the property is not being used for religious purposes.

Representative Olson: You're saying if its mixed use; if any portion of it is being used mixed with religious activity then that would be nontaxable. What's the percentage of mixed use; 90% religious and 10% for profit or vice versa?

Representative B. Koppelman: There can be many different situations when judgement is needed. I will use an example from my area. There is a church in my area. They purchased land that was previously farmland and built an office on one side to house some of their activity as well as a hub for some of their outdoor activities on that land. I believe they continued to allow some of that land to be farmed for a short time and they were taxed on that. The intent of this is saying that if there is a parcel of land with a church building in the corner of it that land is not taxed but if you have a detached piece of property where there is not activity of the church then the land is taxed.

Representative Mitskog: I certainly want to keep this fair for all. Representative B. Koppelman, you made the comment that the assessor would have to use discretion in their interpretation on some of these uses?

Representative B. Koppelman: I was only representing the amendment from before.

Representative Mitskog: I'm concerned about that. I think it would be very difficult for them to do that. I came from a community where 51% of our property is tax exempt so 49% property taxpayers have to bear that burden. I'm all about fairness but I don't want the churches to be burdened by property taxes. It also comes to an expense of the property taxpayers. I would like the Tax Department to give their opinion on the amendment and how they would interpret that.

Chairman Headland: We can get someone from tax here.

Representative Ertelt: I believe the bill exempts that from the exemption on page 1 lines 22-23 it says "any real property owned by any religious corporation or organization and used to further the religious purposes of the organization and not leased." Any land that is rented is not included in this exemption.

Chairman Headland: Except if it's been platted out for sale but has not yet been sold. That's the issue we're generally talking about here. A church plats out some of their extra property then they don't want it to go on the tax rolls until it's sold. That's where the assessors have had a problem determining. I think your amendment goes further than what the problem is and I think it could be simplified. In section b, line 19, after "not leased" we insert "or sold" then you could get rid of c completely.

Representative Trotter: We have a case right now in my area. Our church and the school were both totaled in the tornado so they moved the school to the edge of town. The church purchased the property where the school was which is almost close to a square city block. There are about six to eight lots that could be built on now. They've decided not to sell at this time. If they were to be taxed on that they would probably be forced to look at selling them.

Representative B. Koppelman: To your suggestion on subsection b, I think that it only has to do with the residence of the bishop, priest, or minister. If you change that I don't think it would necessarily take care of the problem with the residential lots.

Chairman Headland: I don't think any of us have the capability to go to court expressing what exactly the constitution spells out. Why does any property beyond where the church sits other than where the church sits and the building to house the priest or minister, why does any additional property go untaxed? I don't think the constitution is real clear. The acreage that is in the current law probably causes some problems.

Representative Olson: Some other states have different levels. Other states have different regulations that talk about loaning or renting of exempt property to nonprofits or schools for

certain types of activities. The rental income is devoted solely to the operation and maintenance of the property.

Chairman Headland: We've dealt with it but it's never to the satisfaction of anyone.

Representative Olson: What about hospitals? How do we handle property that has been purchased by a hospital that will be developed in a year or two but is being leased or farmed until then?

Linda Leadbetter, State Supervisor of Assessments: Those are reviewed at the local level. If they are purchased prior to any construction and being a nonprofit they are taxed until they can prove they are nonprofit. Each entity struggles with that. Purchase of land by a nonprofit does not make it tax exempt until they can prove its use.

Representative Olson: Let's say that they did prove they were a nonprofit and they have land to use in the future, is that land taxed if its' being leased out at the time?

Linda Leadbetter, State Supervisor of Assessments: We would look at the nature of its use. If a nonprofit owns that land and is leasing it then it is not being used for nonprofit purposes. The assessor has to very clearly review its use.

Chairman Headland: Do you believe we need this bill?

Linda Leadbetter, State Supervisor of Assessments: The way the statute is written right now it provides enough information for the assessor to make a determination. As an assessor they have to develop an opinion and it comes back to the idea of the use.

Representative Ertelt: You spoke of use determining the tax exempt status for the property but what about non-use?

Linda Leadbetter, State Supervisor of Assessments: Non-use is still use. The lack of being used still creates its own use.

Representative Olson: How do you define religious purpose?

Linda Leadbetter, State Supervisor of Assessments: The is the opinion of the local assessor. It has to be something reviewed for them to determine. The functions of that is going to be a communication with the assessor and that governing body. I would have to look in the statute to see if religious purpose is defined.

Representative Olson: If a church owns a couple acres but doesn't do anything with it for years so they turn it into a nonprofit community garden operation to allow hundreds of people to come in and grow crops so would that be taxed?

Linda Leadbetter, State Supervisor of Assessments: I would have to look at statute 57-02-08 for all the options of exemption. It doesn't always fall to the point of ownership; the ownership has to be reviewed but it would be to its use.

Representative Grueneich: In the event that Zion Lutheran Church in Ellendale inherited four quarters of land 20 miles from their church and have no intention to develop on it, all they do is farm on it. They collect a check at the beginning or the end of the year. Do they or do they not pay property tax on that land? Yes or No?

Linda Leadbetter, State Supervisor of Assessments: If I were the assessor it would be taxable.

Representative Mitskog: You once worked at the local level. You said it would be taxed. Do you think local assessors struggle with the interpretation in the taxation?

Linda Leadbetter, State Supervisor of Assessments: I think local assessors often deal with issues because they are personal. It's difficult when they are working with local people; family friends, neighbors, etc. I would suspect this is why they want it defined specifically in statute.

Representative B. Koppelman: The bill sponsor quoted Article 10 Section 5 of the state constitution and it says "property used exclusively for school, religious, cemetery, charitable, or other public purposes shall be exempt from taxation. It would suggest that is the burden of the person who owns the land to demonstrate that. School districts have to buy land in order to build new schools. Are we requiring schools to demonstrate they are using every square foot and acre for a school purpose or otherwise they'll be taxed?"

Linda Leadbetter, State Supervisor of Assessments: It again goes back to the property used. If they can address that they own land that is primarily ag land for farming that is not an intention for expansion or for the building. If someone is able to address that with the assessor that would be a local determination. If they receive revenue from that land it will be taxable.

Representative B. Koppelman: The amendment uses the terms, "if the validity of the assessment is in question the assessor has the burden of proving the property is not being used for religious purpose." That is more easily determinable than what we have now.

Chairman Headland: That brings up the question we should be talking about here, whether specifying a certain acreage causes the problems. In past discussions the acreage has always been the problem.

Linda Leadbetter, State Supervisor of Assessments: According to law, every property in the state of North Dakota is taxable unless proven it is exempt. For someone to get an exemption it is their burden to prove they are eligible for it. Statute requires property is taxable unless you prove you are otherwise exempt.

Representative Hogan: There was an issue where the church platted land for potential home development sales. When you were an assessor and worked at the local level would that have been enough of an indication to say it was used exclusively for religious purposes?

Linda Leadbetter, State Supervisor of Assessments: Yes, I believe if something has been platted that would make it have the appearance of not just being a lot that was going to

be developed as a church, additional church facilities, or parking. If it has been platted for sale it would have either a commercial or residential appearance and its use would be considered primarily to be sold as an investment rather than just planning for future construction projects.

Representative Ertelt: Are there multiple provisions in law regarding that burden of proof?

Linda Leadbetter, State Supervisor of Assessments: It would be addressed under the specific subsections in section 57-02-08 that defines what they have to do.

Representative Olson: It's hard to define religious use but if we say it's not platted for sale, it's not contracted for sale, and it's not being used for a profit that may be sufficient to say it's a religious purpose.

Linda Leadbetter, State Supervisor of Assessments: When addressing schools, it's very specifically addressing which properties for schools; it's not everything for schools. It's the use for the school.

Representative Olson: It says in 57-02-08.6 all property belonging to schools, academies, colleges, or other institutions of learning not otherwise used with a view to profit and..." Can you comment on that? It's a blanket exemption.

Linda Leadbetter, State Supervisor of Assessments: All these are subject to interpretation. In that section of law for educational purposes and use of the students in attendance at any of these educational institutions. That is where the housing aspect has been viewed differently.

Representative Ertelt: That is only referring to the dormitories, boarding halls, and the land where they are situated. The first portion of it refers to all property as long as it's not used with a view to profit.

Linda Leadbetter, State Supervisor of Assessments: That is where they go back to the long term leases on those properties.

Representative Mitskog: Could you clarify the farm land issue again? If a person has donated farm land to a church, they are renting it out and the income off that farm land is going directly back to the church for operations, is that taxable?

Linda Leadbetter, State Supervisor of Assessments: If I were the assessor, yes, it would be taxable. Even though it is being used to help support the church it is not being used for religious purposes.

Representative Grueneich: That's the current law?

Linda Leadbetter, State Supervisor of Assessments: Currently, the statute defines it as being used for religious purposes. The definition for a religious organization means a church, body of communicants, or a group gathered in common membership whose primary purpose is for advancement of religion, mutual support, and edification in piety worship and religious

observances. We go back to use. If it is being used as agricultural property, then it is not being used for religious purposes so I would consider that taxable based on its use.

Representative Trottier: Should there be something in statute that if the church buys additional property with the intention of doing something with it, should there be a time limit on it or you don't receive the tax exemption until you do build something?

Linda Leadbetter, State Supervisor of Assessments: If that is something that this body wants to do it can certainly be done. If it's platted for sale or those sorts of things, they would all serve to clear some of these questions up for an assessor.

Representative Olson: You defined religious organizations but you said we didn't have a definition for religious purposes? Do you know if that exists anywhere in the code?

Linda Leadbetter, State Supervisor of Assessments: I would think that religious organization whose primary purpose is for advancement of religion, mutual support, and edification in piety, that is a continuation and would serve to be a definition.

Chairman Headland: I think we're just spinning our wheels here. Let's address the amendment.

Representative B. Koppelman: MADE A MOTION TO ADOPT THE AMENDMENT .02004

Representative Ertelt: SECONDED

Chairman Headland: Discussion?

Representative Steiner: Do we know on this retroactive tax refund if there is going to be a fiscal note applied to this?

Chairman Headland: There certainly would be from the political subdivision where it's located. I'm going to resist the amendment. It was spelled out pretty clearly that the burden of proof is on the payer not the assessor and this changes that. This opens up a can of worms. Are we going to change it for every other organization then to put the burden of proof on the assessor for everything? Current law is working as it's been designed to work. It doesn't satisfy a few religious organizations that view the constitution differently. Maybe it will take a court to decide what the intention of the law.

Representative B. Koppelman: I don't think the constitution is worded that cloudy. I think if we're going to take something out for church property then that's what the law should define. The real issue here has been this acreage limitation that affected churches with continuous property. To have them fight the assessor year after year is a problem we need to deal with. It is our responsibility since we, as legislative assembly, created this old law that has created us these problems. It's our job to fix it and I don't think we should defer that to the courts. By simply saying that as a rule stuff for a church, much like a school, is exempted from taxation unless it's used for profit and having that being demonstrated by the assessor, I don't think that's a huge burden on the assessors. The dance they are playing now is probably harder to justify what is and isn't use. At the very least we have to remove

that acreage requirement and not allow the assessors to have a hard line then have that discussion. I think the amendment does it and I'm certainly going to support it.

Chairman Headland: We have taken out the acreage number but it was put back in by the senate and we weren't able to address it. As far as the burden of proof not being a real burden to the assessor, that may be the case but it is a change in the way it's been done. I don't know that it's something we need to change for one purpose here. I will reject the amendment. Is there anything else?

ROLL CALL VOTE: 4 YES 10 NO 0 ABSENT

MOTION FAILED TO ADOPT THE AMENDMENT .02004

Representative Olson: Would you be friendlier to the amendments if the assessor burden of proof were removed? Is there anything else you objected to within the amendment?

Chairman Headland: I would be friendlier if we removed page two subsection e.

Representative Olson: I would **move an amendment that is the exact same as this amendment except for the portion that states, "page 2 after line 6 insert e."**

Representative Steiner: SECONDED

Representative Hogan: I'm concerned about the retroactivity of this still and I think that is a huge problem. I will oppose that amendment.

Representative Olson: I don't think we even touched on this portion yet with regards to the retroactivity. **WITHDREW MOTION**

Representative Steiner: WITHDREW SECOND

MOTION WITHDRAWN

Representative Olson: Representative Hogan, can you explain your thoughts please?

Representative Hogan: On page two, line seven when they say the effective date is a retroactive application it goes back to 2009. I have very significant concerns about not knowing what the fiscal implications would be. I think we're opening up a can of worms.

Representative B. Koppelman: We heard from the bill sponsor in the original discussion that this bill was somewhat aimed at holding off a lawsuit. Part of the reason for that portion of the amendment was reflecting what they would probably sue for if they were taken to court. For the sake of passing the bill and going forward I don't believe the retroactivity is a key component of what we're trying to do here. By removing the retroactivity, it could still leave a potential for a lawsuit on those past years but at least years going forward the hope would be that we would be fixing this section of law. Representative Olson, maybe you could make another motion and excluded the retroactivity. As long as it is after 2016 at least we'd be fixing the problem going forward.

Representative Olson: MADE A MOTION TO AMEND AS PREVIOUSLY STATED WITH THE EXACT LANGUAGE OF AMENDMENT 02004 MINUS THE THREE LINES FOLLOWING THE WORDS "PAGE 2 AFTER LINE 6 INSERT" AND ALSO REMOVING THE FOUR REFERENCES TO PAGE 2 LINES 7 AND 8 REGARDING THE RETROACTIVE APPLICATIONS.

Representative Steiner: SECONDED

Representative Ertelt: In that motion you may have overlooked page 1 line 2.

Representative Olson: WITHDREW MOTION TO ADOPT THE AMENDMENT

Representative Steiner: WITHDREW SECOND

Representative Olson: MADE A MOTION TO AMEND ACCORDING TO THE AMENDMENT 2004 LESS ANY REFERENCES TO THE RETROACTIVE APPLICATION AND LESS THE THREE LINES OF TEXT AFTER PAGE 2 LINE 6.

Representative Steiner: SECONDED

Chairman Headland: What does the language mean to everybody, "not leased or otherwise used with a view to a profit"? I don't think this addressed the issue with platted land which is the reason we're having this discussion.

Representative Ertelt: In the earlier discussion 57-02-08.6 was referenced. I don't know if it's incumbent on this committee to decide what is a view to profit. It's already used in statute and applies to schools, academies, colleges, and other institutions of learnings. I would think they ought to be consistent with our state constitution also apply it to religious institutions.

Representative Olson: The question on whether it's used to a view with a profit or platted for sale, in 57-02-08 subsection 2 it says no lands contracted to be sold by the state shall be exempt. That would appear to reveal the intent of the legislature as to what a view to a profit is.

Chairman Headland: The trouble is all of that is existing and it hasn't answered the question properly for the assessors in today's. This is difficult because it seems to be open to interpretation.

Vice Chairman Dockter: I'm going to resist any amendment that we propose. I don't believe this is going to solve anything that we're trying to figure out with this bill. We just keep going around and around.

Representative Olson: The amendment is good but maybe you just oppose the bill.

Chairman Headland: Is there anything else?

ROLL CALL VOTE: 10 YES 4 NO 0 ABSENT

MOTION CARRIES TO ADOPT THE AMENDMENT

Chairman Headland: Waiting for direction from the committee.

Representative B. Koppelman: **MADE A MOTION FOR A DO PASS AS AMENDED**

Representative Olson: **SECONDED**

Chairman Headland: Any discussion?

Representative Schobinger: I've known the sponsor of this bill for many years and when he speaks I listen. If all this bill did was remove the acreage requirements, I could probably support it. This just doesn't clear it up to me. I think the code is pretty clear the way it sits.

Chairman Headland: I'm in total agreement with you.

ROLL CALL VOTE: 7 YES 7 NO 0 ABSENT

MOTION FAILS FOR NO MAJORITY

Representative Olson: **MADE A MOTION TO SEND WITHOUT COMMITTEE RECOMMENDATION**

Representative B. Koppelman: **SECONDED**

Chairman Headland: Discussion? I'll reject the motion. I feel we should send the bill out one way or another. I'm still hung up on the platted land that I don't think this amendment addresses. I agree with Representative Schobinger; the simple fix would be to get rid of the acreage which we've done in the past but the senate rejected it.

Representative Ertelt: I don't think that past results should dictate our current decisions. I don't know that by just stripping the text of the acreage would give us a valid bill. I think there might be some other language that needs to be added.

Representative Mitskog: What is the legislative intent of this bill? Is it the acreage?

Chairman Headland: No. The intent of this bill is to get rid of the acreage.

Representative B. Koppelman: I believe the intent of this bill was not specific to removal of the acreage, although that is the byproduct of what the intent was. The intent of this bill is not to tax any property that's used for religious purposes. In absence of this bill that is going to continue. I don't know that the entire disagreement with the law in the last couple sessions was limited to platted property. This bill does a lot more than that. There is plenty of ways under current where you could argue churches can be taxed on property that is continuous to their operation and to their religious purpose only because of the acreage. The real issue is the question of should churches be taxed on any of their property used for religious purposes? The other issues are small and acute.

Representative Mitskog: Do you think farm land that is donated to a church then rented out for a profit would be tax exempt?

Representative B. Koppelman: No, I don't believe this bill would change that. Part of the amendment is trying to make it clearer that things that aren't used by the church for religious purpose wouldn't change. This bill is about not taxing property where there is an active religious purpose being executed on that property.

Representative Mitskog: In the language in section 1c, any real property owned by any religious corporation or organization and used to further the religious purposes... What if they farm it? Or what if their parishioners farm it?

Representative Olson: That's one of those gray areas that we don't address anywhere in the law right now. I believe it would be considered with a view to a profit. There are other portions in the code that view profit as any income over and above the cost of maintenance and operation of that land. I think in your case it may be considered a profit.

Representative Mitskog: How would this section pertain to Hutterites?

Chairman Headland: I don't think they are deemed a religious organization. We should be discussing the motion of without committee recommendation.

Representative Ertelt: I think this is really addressing the additional acreage issue. I don't think it is really expanding beyond that by including the language about view to profit but rather restricting it.

Chairman Headland: We should be focusing on the motion before any other motion is discussed.

Representative Olson: Called the question.

Chairman Headland: The question has been called.

ROLL CALL VOTE: 5 YES 9 NO 0 ABSENT

MOTION FAILED TO SEND OUT WITHOUT COMMITTEE RECOMMENDATION

Vice Chairman Dockter: MADE A MOTION FOR A DO NOT PASS AS AMENDED

Representative Howe: SECONDED

Chairman Headland: Discussion?

ROLL CALL VOTE: 7 YES 7 NO 0 ABSENT

MOTION FAILED

Representative Ertelt: MADE A MOTION TO STRIP THE AMENDMENT

NO SECOND

MOTION FAILS FOR LACK OF A SECOND

Representative Olson: MADE A MOTION FOR WITHOUT COMMITTEE RECOMMENDATION AS AMENDED

Representative B. Koppelman: SECONDED

Representative Trottier: My problem with the entire bill is the intent of the church now being deemed church property. Can the land sit there for 20 years that they can use it?

Representative Ertelt: If you're not doing anything to that land you're not making any use of that land so why would you be paying property tax to it?

Representative Steiner: If there is a fire on the grasslands or a heart attack on that land a fire truck and an ambulance will respond so they are receiving services on that land.

Chairman Headland: Anything else?

ROLL CALL VOTE: 10 YES 4 NO 0 ABSENT

MOTION CARRIED FOR WITHOUT COMMITTEE RECOMMENDATION AS AMENDED

Representative Olson will carry this bill.

Chairman Headland: This has always been one of those bills that has generated a lot of debate.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1424

Page 1, line 1, after "57-02-08" insert "and section 57-02-14.1"

Page 1, line 2, after the semicolon insert "to provide for retroactive application;"

Page 1, line 7, overstrike "buildings" and insert immediately thereafter "real property"

Page 2, line 2, after "taxation" insert ". Earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection"

Page 2, after line 6, insert:

"e. If the validity of an assessment is in question, the assessor has the burden of proving the property is not being used for religious purposes.

SECTION 2. AMENDMENT. Section 57-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-14.1. Tax exemption certificate for real property to be filed - Exceptions.

Any person, corporations, limited liability companies, associations, or organizations owning real property located within a municipality which claims that such real property is exempt from assessment and taxation shall file with the assessor and with the county auditor a certificate setting out all facts on which the claim for exemption is based, including the names of owners, the date such property was acquired, the legal description, the use to which the property was put during the twelve months preceding the assessment date, and any other information which the assessor may request. This certificate shall be filed with the assessor and the county auditor each year before the assessment date. If the certificate is not filed as provided herein, the assessor shall regard the property as nonexempt property and shall assess it as such. The provisions of this section shall not apply in any case when the real property is owned by a religious corporation or organization and not leased or otherwise used with a view to profit, the United States, or the state of North Dakota or any of its departments, institutions, agencies, or political subdivisions."

Page 2, line 7, after "**DATE**" insert "**- RETROACTIVE APPLICATION**"

Page 2, line 7, after "is" insert "retroactively"

Page 2, line 7, after "effective" insert "and applies"

Page 2, line 8, replace "2016" with "2009. The board of county commissioners shall refund taxes under this Act"

Renumber accordingly

2/7/17 DA

17.0934.02005
Title.03000

Adopted by the House Finance and Taxation
Committee

February 7, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1424

Page 1, line 1, after "57-02-08" insert "and section 57-02-14.1"

Page 1, line 7, overstrike "buildings" and insert immediately thereafter "real property"

Page 2, line 2, after "taxation" insert ". Earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection"

Page 2, after line 6, insert:

"**SECTION 2. AMENDMENT.** Section 57-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-14.1. Tax exemption certificate for real property to be filed - Exceptions.

Any person, corporations, limited liability companies, associations, or organizations owning real property located within a municipality which claims that such real property is exempt from assessment and taxation shall file with the assessor and with the county auditor a certificate setting out all facts on which the claim for exemption is based, including the names of owners, the date such property was acquired, the legal description, the use to which the property was put during the twelve months preceding the assessment date, and any other information which the assessor may request. This certificate shall be filed with the assessor and the county auditor each year before the assessment date. If the certificate is not filed as provided herein, the assessor shall regard the property as nonexempt property and shall assess it as such. The provisions of this section shall not apply in any case when the real property is owned by a religious corporation or organization and not leased or otherwise used with a view to profit, the United States, or the state of North Dakota or any of its departments, institutions, agencies, or political subdivisions."

Renumber accordingly

Date: 2-7-17
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1424**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 17. 0934 02004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Ertelt

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Hogan		✓
Vice Chairman Dockter	✓	✓	Representative Mitskog		✓
Representative Ertelt	✓				
Representative Grueneich		✓			
Representative Hatlestad		✓			
Representative Howe		✓			
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger		✓			
Representative Steiner	✓	✓			
Representative Toman	✓				
Representative Trottier		✓			

Total (Yes) 4 No 10

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

FAILED

Date: 2-7-17
 Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1424**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 02004 less references to retroactivity and p 2 after line 6 less 3 lines

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Olson Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Hogan	✓	✓
Vice Chairman Dockter		✓	Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓	✓			
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-7-17
Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1424

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Koppelman Seconded By Rep. Olson

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Hogan		✓
Vice Chairman Dockter	✓	✓	Representative Mitskog		✓
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓	✓			
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓	✓			
Representative Steiner	✓				
Representative Toman	✓				
Representative Trottier		✓			

Total (Yes) 7 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

FAILED

Date: 2-7-17
 Roll Call Vote #: 4

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1424**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Olson Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Hogan		✓
Vice Chairman Dockter		✓	Representative Mitskog	✓	
Representative Ertelt		✓			
Representative Grueneich		✓			
Representative Hatlestad		✓			
Representative Howe		✓			
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner		✓			
Representative Toman	✓	✓			
Representative Trotter		✓			

Total (Yes) 5 No 9

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

FAILED

Date: 2-7-17
 Roll Call Vote #: 5

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1424**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Dockter Seconded By Rep. Howe

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland	✓		Representative Hogan	✓	
Vice Chairman Dockter	✓		Representative Mitskog	✓	
Representative Ertelt		✓			
Representative Grueneich		✓			
Representative Hatlestad		✓			
Representative Howe	✓	✓			
Representative Koppelman		✓			
Representative Olson	✓	✓			
Representative Schobinger	✓	✓			
Representative Steiner		✓			
Representative Toman		✓			
Representative Trottier	✓				

Total (Yes) 7 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

FAILED

Date: 2-7-17
 Roll Call Vote #: 6

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1424**

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Olson Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Headland		✓	Representative Hogan	✓	
Vice Chairman Dockter		✓	Representative Mitskog	✓	
Representative Ertelt	✓				
Representative Grueneich	✓				
Representative Hatlestad	✓				
Representative Howe	✓				
Representative Koppelman	✓				
Representative Olson	✓				
Representative Schobinger	✓				
Representative Steiner		✓			
Representative Toman	✓				
Representative Trottier		✓			

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Olson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1424: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1424 was placed on the Sixth order on the calendar.

Page 1, line 1, after "57-02-08" insert "and section 57-02-14.1"

Page 1, line 7, overstrike "buildings" and insert immediately thereafter "real property"

Page 2, line 2, after "taxation" insert ". Earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection"

Page 2, after line 6, insert:

"SECTION 2. AMENDMENT. Section 57-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-14.1. Tax exemption certificate for real property to be filed - Exceptions.

Any person, corporations, limited liability companies, associations, or organizations owning real property located within a municipality which claims that such real property is exempt from assessment and taxation shall file with the assessor and with the county auditor a certificate setting out all facts on which the claim for exemption is based, including the names of owners, the date such property was acquired, the legal description, the use to which the property was put during the twelve months preceding the assessment date, and any other information which the assessor may request. This certificate shall be filed with the assessor and the county auditor each year before the assessment date. If the certificate is not filed as provided herein, the assessor shall regard the property as nonexempt property and shall assess it as such. The provisions of this section shall not apply in any case when the real property is owned by a religious corporation or organization and not leased or otherwise used with a view to profit, the United States, or the state of North Dakota or any of its departments, institutions, agencies, or political subdivisions."

Renumber accordingly

2017 SENATE FINANCE AND TAXATION

HB 1424

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

House Bill 1424
3/7/2017
Job #: 28787

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 9 of section 57-02-08 and section 57-02-14.1 of the North Dakota Century Code, relating to the property tax exemption for property of churches; and to provide an effective date.

Minutes:

Attachments #: 1, 1A, 1B, 1C, 1D, 1E, 2, 3, 3A, 4, 5, 6, 7, 8, 8A, 8B, and 8C,

All Senators present.

Chairman Cook: Opened the public hearing on HB 1424.

(0:00:05-0:21:05) Representative Kim Koppelman, District 13: presented testimony in support of HB 1424. Attachments #1, 1A, 1B, 1C, 1D, 1E, and #2.

Vice Chairman Bekkedahl: In your testimony, you mention some of the Attorney General opinions, and they all talk about land so used, used exclusively for religious purposes, acreage would be exempt. Later on, you talk about in the amendment, the responsibility to prove that would not be on the property owner but would be on the assessor's office. That seems to be a pretty critical aspect to this discussion.

Representative Koppelman: The reason that I think that's important. There's already a question about this and for tax assessors to sit back and say, ok, it's over 5 acres, prove it. You come in here and prove to me that it's being used for religious purposes. You shouldn't have to prove it's for profit or not. Then the case is clear if it's being used for a profit. It would be no great feat for the tax assessor to come in and say, this is being used for a profit. If it's clearly where the church sits and they do their business, it creates a presumption that it's being used for religious purpose as the constitution would, unless as the bill states, being used for profit.

Vice Chairman Bekkedahl: How do you determine property contiguous to a church property. It's all for religious use, but the appreciative value of that property that they may never use could come under purview of for profit.

Representative Koppelman: I don't know of any real world examples where that has happened. It would be rather foolish to buy 80 acres and mow the lawn and not use it for

anything else. They may plat and sell as lots, can be taxed. Or they may plant a crop or do something else that is clearly for that purpose is clearly taxable. The key is, if it's part of their church lot, they shouldn't be taxed. I was part of a church plant, we bought 10.6 acres, were told to buy more than you need. As you grow, you'll add on to the building, you'll need a bigger parking lot. There could come a time when we decide we need only 8 acres and sell some off, but that's then it should become taxable in my view.

Vice Chairman Bekkedahl: Should it not be incumbent on the owners of that property to at least present to the assessor's office at least some future plans versus just saying we own it; you can't tax it. Shouldn't there be some premises, always prepared for that eventuality to know of possible future plans.

Representative Koppelman: I would have no objection if you wanted to change the language to say, for example, leaving it incumbent on the tax assessor to demonstrate that it's not for religious purpose and ask the church about their future plans. If they're property developers that's a different animal. They buy a section of land and it's going to become a residential area, water park, office building, that's the key. Nothing in the Constitution is contemplates contiguous, there can also be a parsonage across town that's also under the Constitution and the law.

Senator Laffen: I am struggling with the definition of what's profit and what's not. If a church holds a bunch of bake sales on the land, they're making profit. It's going back to the church. But if they dig it up and plant corn on it, are they making a profit or is it going to the church?

Representative Koppelman: The language of "view to profit" is elsewhere in code and that's why legislative council recommended it as good language. There is probably case law and other definition on it. On the bill though, without the amendment, there is some clarity. If you have a building and provide a daycare and take in money. Have a little book store. Part of the religious enterprises. If it's outside of that, and clearly used for profit. Lawsuit scenario, we've got a restaurant downtown, all the proceeds go to our church, it's used for our religious purposes. They could fight that battle. The Constitution says if it's used for religious purpose. There is a whole lot of non-profits outside of churches. This bill just tries to protect the churches.

Senator Laffen: It does cross that line, it says earnings derived from the provision of goods and services on property owned by a religious corporation or organization may not be viewed as profit. That simply says if you own it, and you make profit, it's nontaxable.

Representative Koppelman: The question came up in the House, what about the bookstore or the daycare, on the property. Quarter of land that's farmed.

Senator Dotzenrod: In your testimony you're saying the legislator doesn't have the authority to define a religious purpose. If there is no authority and we can't limit it, can't define it, can I assume then that the definition is left up to the church.

Representative Koppelman: The definition, those words are in the Constitution, religious purposes, they aren't defined there. We're on dangerous ground because of our guarantee in the Constitution of the freedom of religion. If government ever gets into the business of

deciding what is and isn't a religious purpose or practice. We have done to some degree, looser definition, more in line with this bill. The reason we're here, we've been so specific, some taxing officials have been over aggressive.

Chairman Cook: Toughest issue this committee worked with. A question that was raised to me from a school district was about the Hutterites and the large section of lands they are. Are they going to be tax exempt?

Representative Koppelman: They are a colony form of life, so their residences, there's everything is part of the religion for them. That kind of discussion could be had with a taxing official, that this is where your religious purpose and pinpoint where it's held. This bill doesn't give them license for them to hold exempt that big of an area. Schools and churches are in the same sentence, yet I've not heard of one case of school property in North Dakota ever being taxed.

(0:35:10-0:38:25) Representative Bernie Satrom, District 12: I'm here in support of HB 1424. I have designed church buildings all over the world. Churches should buy more land than you need. First of all, churches need a master plan. From a tax prospective and a usage prospective. Need room for parking, have landscaping requirements, adequate room for future development, and also storm water retention. Space for recreation, have 14 acres and plan to make good use. The great thing, we have room for current and future parking.

Vice Chairman Bekkedahl: Those prospective are helpful. What's the intent? You have given great parameters to how you define that from the religious organizations prospective, so I hope we can come to some agreement that we need to define some intent out there. I agree with your concerns.

(0:39:10-0:45:51) Dr. Randal Jaspers, Lead Pastor, Temple Baptist Church: Testified in support of HB 1424. **(Attachment #3)** Also handed out a letter from Bryan Hochhalter of Bismarck Baptist Church and explained in detail what is contained in the letter. **(Attachment #3A)** That it's a direct violation of state code, frustration, primarily why here today. There is not a clear understanding from one county to the next. A suggestion made by the legislature, these two men would get together with the tax department and AG's office to produce a webinar to go out to the cities and the county assessors to have a consistent voice, to sign off on it so that there is one clear understanding and we don't have situations like this where it's clearly not needed to be taxed, and getting pushback from their city.

Chairman Cook: Dr. Jaspers, you're just preaching my sermon that I've been preaching for the last 10 years, only you're preaching it about churches and I've been preaching it about all property in the State of North Dakota. Linda Leadbetter is sitting right there, she is the state director of tax equalization and she can call up the Bismarck city assessor and she can say, would you stop this. Can't you? Would you do that for us?

(0:47:00-0:51:59) Mark Jorritsma, Executive Director, Family Policy Alliance of North Dakota: presented testimony #4 in support of HB 1424.

(0:52:05-0:57:45) Stephen Smith, Operations Pastor, Prairie Heights, West Fargo: Prairie Heights owns approximately 17 acres in West Fargo. In 2009, Prairie Heights purchased 30 acres and were granted a conditional use permit and completed the office administer center in 2011. The facility was used for many church operations. The rapid growth of the area was going to force Prairie Heights to join in developing the local streets and utilities necessary for the expansion. They sold portions of the acreage to protect them from \$75,000 in annual specials and completed their plant in the end of 2011. Prairie Heights retained approximately 17 acres, of which 9 acres are for single and multi-family homes and 5 acres became roads. Each year Prairie Heights has completed, submitted, and received approval for its application for property tax exemption. They have always submitted that the land is used exclusively for public worship or property belonging to a religious organization and used for religious purposes. Due to the vagueness of the law, we were still required to pay taxes on the church property. Until we received our certificate of occupancy, we could not use if for religious purposes.

Regarding our property taxation, our question and petition is only regarding the 17 acres on which we currently now exist, we are in favor of HB 1424 as submitted for the following reasons. The current law restricting tax free ownership to 5 acres is arbitrary. If a church owns any property on which it intends to expand. The current law and application process makes it difficult to establish whether the first 5 or second 5, no help with use of proof. Here's how you can prove that use. Current law, organized religious services. Outside the boundaries. Excess of 5 acres. Puts the state in the viability, certifying. When and where, claw is understood and interrupted, applied by local officials. The current law is at odds with the constitution.

(0:57:45-1:00:30) Christopher Dodson, North Dakota Catholic Conference: The provision in the Constitution is self-executing, the only reason the legislation is involved is to send a message to local governments, not the church. There are a lot of questions about the presumption issue, strong, religious activity, ancillary activities are also recognized, can be rebutted and find out it's being used for. Churches revenue is not the same as profit, unrelated business income. There are ways to determine if something is being used for a profit as opposed to revenue returned back to the church. Donation of money exchanged. A majority of the time there aren't problems, but they keep popping up. New people say that taxes are owed, and it's really burdensome on church entities.

Vice Chairman Bekkedahl: The religious intent and the constitutionality of that, I want to put in context a prior question by the Chairman then, about the Hutterite colony situation. The colony exists solely for religious purpose. They farm and do all the things that they do. How would you look at that situation constitutionally with what your testimony brought to us today?

Christopher Dodson: The first question that comes to mind is, how does the IRS treat them? If there is income profit, unrelated to a business income in regards to a religious entity and were taxed by the IRS.

(1:02:10-1:07:30) Kevin Ternes, Minot City Assessor: Testified in opposition to HB 1424. **(Attachment #5)**

(1:07:32-1:00:00) Terry Traynor, Association of Counties: Handed out **attachment #6** from Don Flaherty, Tax Director in Dickey County, in opposition of HB 1424. With the new section C, the Hutterite Colonies would be considered tax exempt. There was talk of implications to local government. There are no implications, local government does not lose revenue because of an exemption, everyone else pays more taxes. There was a discussion about amendments that turn around the burden of proof. It isn't appropriate. The organization needs to come in and say, this is our land, this is where we're going to have our plant. The assessor can't divine what they're plans are. There are religious organizations in this community that own motels and convenience stores. I do not believe their religious purposes and they need to be demonstrated to the tax assessor. As the bill is written we are opposed.

Senator Meyer: Do you have any idea how many acres might be covered in the whole state?

Terry Traynor: I have no idea, I know there are many Hutterite and other similar colonies around the state.

(1:11:05-1:12:50) Rick Steen, Commissioner, Cass County Commission: presented testimony #7 in opposition of HB 1424.

(1:13:00-1:16:40) Bill Wocken, League of Cities: presented **attachment #8** in opposition of HB 1424 which included **attachments 8A, 8B, and 8C.**

(1:16:45-1:18:38) Elsie Magnus, Commissioner, Cavalier County & Reverend Deacon of the Episcopal Church: testified in opposition to HB 1424. About 5 or 6 years ago there 7 Hutterite colonies in the state and were proposing to buy about 2,100 acres near Hillsboro and they like to have their colonies be about 4,000 acres. That was just a quick google search I did. We have a colony in our county and as a commissioner I realize how important it is to be fair in taxation. So that the church properties that are used specifically for the promotion of their denomination is understandable. When it goes beyond that, we have a quarter of land and I don't think that land should be tax free and pays taxes.

(1:18:45-1:19:55) Terry Weis, Property Owner, Fullerton, ND: We have 4 colonies in the Fullerton area. One in Edgeley, LaMoure, Fullerton, and Forbes. They have 10's of thousands of acres. They are major farmers and paid cash for their land. If they become exempt property owners, that means that my taxes are going to go up. The townships, what are they going to do? It's a major problem. It's one thing about a church building and their surrounding land, but it's another if you use, religious organizations.

Chairman Cook: Linda, can I ask you one question. Is there any definition written for exclusively?

Linda Leadbetter, State Supervisor of Assessments, Office of State Tax Commissioners: I would have to look for that, I don't know that we have one for exclusively.

Chairman Cook: If you do have one, could you let the committee know. Thank you. Closed the hearing on HB 1424.

2017 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

House Bill 1424
3/7/2017
Job #: 28811

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 9 of section 57-02-08 and section 57-02-14.1 of the North Dakota Century Code, relating to the property tax exemption for property of churches; and to provide an effective date.

Minutes:

No Attachments

Chairman Cook: Let's go to 1424. Four years ago this bill sat down here a long time before it went out. I would like to eliminate that possibility. Are all of you in a position where you could take action on this, this afternoon?

Senator Unruh moved a do not pass on Engrossed House Bill 1424.

Senator Laffen seconded.

(0:01:00-0:03:05) Committee discussion about testimony. Religious colonies briefly mentioned.

A Roll Call Vote was taken. 6 ayes, 0 nays, 0 absent.

Motion passed.

Senator Dotzenrod will carry the bill.

Date: 3-7-17
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1424

Senate _____ Finance and Taxation _____ Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Unruh Seconded By Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	<u>X</u>		Senator Jim Dotzenrod	<u>X</u>	
Vice Chair Brad Bekkedahl	<u>X</u>				
Senator Lonnie J. Laffen	<u>X</u>				
Senator Jessica Unruh	<u>X</u>				
Senator Scott Meyer	<u>X</u>				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Dotzenrod

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1424, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1424 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1424

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1424

Page 1, line 1, after "57-02-08" insert "and section 57-02-14.1"

Page 1, line 2, after the semicolon insert "to provide for retroactive application;"

Page 1, line 7, overstrike "buildings" and insert immediately thereafter "real property"

Page 2, after line 6, insert:

"e. If the validity of an assessment is in question, the assessor has the burden of proving the property is not being used for religious purposes.

SECTION 2. AMENDMENT. Section 57-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-14.1. Tax exemption certificate for real property to be filed - Exceptions.

Any person, corporations, limited liability companies, associations, or organizations owning real property located within a municipality which claims that such real property is exempt from assessment and taxation shall file with the assessor and with the county auditor a certificate setting out all facts on which the claim for exemption is based, including the names of owners, the date such property was acquired, the legal description, the use to which the property was put during the twelve months preceding the assessment date, and any other information which the assessor may request. This certificate shall be filed with the assessor and the county auditor each year before the assessment date. If the certificate is not filed as provided herein, the assessor shall regard the property as nonexempt property and shall assess it as such. The provisions of this section shall not apply in any case when the real property is owned by a religious corporation or organization and not leased or otherwise used with a view to profit, the United States, or the state of North Dakota or any of its departments, institutions, agencies, or political subdivisions."

Page 2, line 7, after "DATE" insert "- RETROACTIVE APPLICATION"

Page 2, line 7, after "is" insert "retroactively"

Page 2, line 7, after "effective" insert "and applies"

Page 2, line 8, replace "2016" with "2009. The board of county commissioners shall refund taxes under this Act"

Renumber accordingly



North Dakota House of Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative
Kim Koppelman
District 13
513 First Avenue NW
West Fargo, ND 58078-1101

Residence: 701-282-9267
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Committees:
ary
al Subdivisions

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1-31-17
HB 1424

1-31-17

TESTIMONY ON HOUSE BILL 1426

Mr. Chairman and Members of the Committee;

In 2011, this Assembly passed legislation aimed at protecting churches from property taxes. We did this by expanding the definition in law of land mass that it is absolutely forbidden to tax. The result, ironically, was not churches being taxed less, but they quickly began being taxed more! In fact, after passing that legislation, some were taxed for the first time ever. It happened because some saw the legislation not as strengthening the Constitutional prohibition against such taxation, but as a bright line test on what they COULD tax. This not only violated legislative intent, it was clearly unconstitutional.

Two years later, I introduced legislation to attempt to repair the damage and solve the problem. The House understood and, in fact, even strengthened the bill, with amendments, before passing it. The Senate, however, did not accept the House version of the bill.

To its credit, the Senate improved the previous law, extending a two-acre provision in the 2011 legislation to a 5-acre provision. This clearly improved the situation. It helped some churches, but others continue to suffer, again because some see this as a license to tax, rather than a prohibition against taxing. Furthermore, some are interpreting laws and definitions even more strictly than ever before and are taxing property more zealously than ever before.

I'm pleased to be able to tell you that this isn't the case everywhere and, in fact, as I understand it, some areas have no interest in taxing church property and aren't attempting to do so. In other areas, however, churches languish under this unconstitutional exercise of raw taxation power, creating unequal status for churches in our state. This is something our Constitution forbids and our laws should not allow.

That's why I stand before you today, in one more attempt to set things right, to uphold the North Dakota Constitution, to stand up for religious liberty, free from government intrusion, and, sadly, in hope one more time of preempting what I fear will follow if we don't fix this--churches suing political subdivisions in North Dakota for violation of our state's Constitution. I believe that's what the future will hold, if we fail to act.

I truly want to avoid that scenario and hope that you will stand with me in helping to avoid it by passing HB 1426.

Let me walk you through the issue:

North Dakota Attorney Generals' Opinions have made it very clear that our Constitution forbids the taxation of church property used for religious purposes.

A 1981 Opinion by AG Robert Wefald states, in part:

"If a church uses real property in excess of two acres* for religious purposes all the land so used even though it is in excess of two acres is eligible for a real estate tax exemption provided that the use of the real property by the church is reasonably necessary and that it is actually used exclusively for religious purposes."

**note that 2 acres was the reference in statute at the time.*

...and "If more than two acres of land are used exclusively for religious purposes, the acreages so used would be exempt under Section 5 of Article X of the Constitution and would not be limited to the two-acre exception created by subsection 9 of section 57-02-08, N.D.C.C. ***In a conflict between a statute and a provision of the Constitution, the Constitution prevails.***"

(emphasis added)

A later Opinion, in 1995, by AG Heidi Heitkamp reaches concurring conclusions, stating, in part:

"the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious purposes by the exemptions in N.D.C.C. 57-02-08 (7) and (9) because Article X, Section 5 is self-executing..."

"...property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature."

"Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature."

“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.”

...and “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 that exemption.”

(emphasis added)

The intent and effect of the North Dakota Constitution is clear. Property owned by a church to carry out its religious purposes is nontaxable. The Constitution, as noted in the second reference, was amended to clarify that it protects churches from taxation (the self executing provision) and that the Legislature may not limit the exclusion.

The Legislature, accordingly does not have the authority to define or limit a "religious purpose", by acreage or any other means. For the Legislature to have such authority would not only fly in the face of this provision of the North Dakota Constitution, but also the bar in the First Amendment of the United States Constitution against the infringement of religious liberty, in my opinion.

I don't believe, however, that this is an authority that the North Dakota Legislature has necessarily tried to assert. Instead, my investigation and analysis leads me to believe that our Legislature has placed definitions in law which have included acreage, for example, to prevent eager taxing authorities from violating the Constitution and taxing church property; in other words, to clearly define what is absolutely nontaxable, not to imply that property not falling into that description is, in fact, taxable.

The Attorney Generals' Opinions referenced, particularly the latter one, makes this quite clear by asserting that the Constitutional exemption is self-executing. In other words, not only does it not take Legislative action to activate it, but also no action by the Legislature can curtail or restrict it.

This alarming advent of taxation of church property prompted my initial inquiry with the North Dakota Legislative Council. You'll find that the response of the-then Chief Code Reviser, Mr. John Walstad, indicates

similar amazement at how anyone could interpret the Legislature's 2011 expansion of non-taxable land as a license to tax more.

The bottom line, from my study and conversations on this matter, is that I believe that taxing authorities are interpreting the law as a "bright line test". They believe the Legislature has told them to tax right up to the point outlined in the law.

The two Attorney Generals' Opinions I've referenced bolster the reading that property owned by churches for religious purposes is nontaxable. They clearly show that the Constitutional principle trumps any specific definition in statute, which means that taxing authorities can--and, I would submit, MUST--refrain from taxing a larger area which still meets the Constitutional definition.

This, however, is not how some North Dakota taxing authorities have apparently responded. Instead, they have descended upon church property with tape measures and aerial photographs to attempt to determine what are they now believe is taxable.

I attempted to resolve this matter by intervening for a church in my district which was being excessively burdened with new taxation. I can furnish you with the letter I wrote to the local tax assessor, which contained my analysis of the issue, but you'll have enough paper on this issue, so I haven't included it with my testimony. I also made county and state officials aware of the problem (I'd also make those documents available if you're interested). The result, for this church, was an eventual reduction in the amount that was previously threatened to be taxed, but a large property tax assessment, for the first time ever, nonetheless. This burden forced the church to subdivide and sell some of its lot, because it could not afford the taxes.

The good news is that, after we passed the 2013 legislation, and after it had sold off some of its property, this church was finally able to procure a refund--four years later--of at least some of the taxes which had been inappropriately been imposed. The bad news is that, before this occurred the financial burdens on this church forced it to sell its property.

That's just one church's story but, sadly, there's more bad news--another nearby church was denied such a refund, altogether.

After it became apparently that the Legislation passed in 2013 did not suffice to cure this problem, I sought yet another Attorney General's

Opinion. While it once again reaffirmed the Constitutional principle, it placed the burden of proof upon churches, rather than taxing authorities. I believe this is inappropriate and it's clearly something we can correct in statue, so I've included amendments which I'd ask that you'd attach to the bill.

In conclusion, as mentioned earlier, I am told that there have been discussions with legal experts who are ready and willing to represent North Dakota churches on this matter, probably free of charge, to restore their religious freedom and the Constitutional exemption they've been denied. So far, to the best of my knowledge, no lawsuits have ensued, I believe, because those churches are looking to us, in the Legislature, one last time, to correct this problem.

They should be congratulated for their restraint because, it would appear, if such lawsuits ensued (as they may if we fail to act) that the churches would easily win.

No one wants North Dakota churches suing political subdivisions or our state--least of all the churches, themselves. We must prevent that by doing the right thing, through this legislation.

As I've explained, churches are suffering and their influence in our state and communities is being harmed, all because of the heavy hand of unconstitutional government taxation. Their potential growth is being thwarted by the very communities they exist to benefit. Land purchased for worship, ministry, and for the growth of churches has been forced to be sold because congregations can't afford the taxes imposed. Many, already burdened with crippling special assessments (often also arguably unwarranted or excessive) are now, for the first time ever, suffering the additional burden of financially-crippling property taxation!

Churches should not cower in fear of their government. The power to tax is the power to destroy. Destroying churches should certainly not be our aim. We should not allow it to be the unintended effect of misinterpretation of our law and Constitution, either.

It's time to ensure that our law clearly matches our Constitution by removing statutory church property definitions, descriptions, or references to acreage. These provisions have apparently misled taxing authorities into the assumption that they have the authority--or, worse yet, the requirement--to tax church property, despite the freedom from this taxation guaranteed by our Constitution.

Mr. Chairman, Members of the Committee, I don't believe, as a legislator, that I've ever seen a clearer opportunity to uphold my oath of office or to "right a wrong" in our government. Our responsibility, now, is to end this practice, once and for all, to make it crystal clear that the North Dakota Legislature upholds the Constitution, as we've each sworn to do, and to ensure that the religious freedom guaranteed by the founders of our state and nation is upheld.

Mr. Chairman and members of the Committee, I respectfully ask you to give HB 1300 a resounding "Do Pass" recommendation to help accomplish this important purpose. Thank you.

Respectfully Submitted,

Rep. Kim Koppelman
West Fargo, ND -- District 13
Chairman, Judiciary Committee,
Past National Chairman, The Council of State Governments (CSG)





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118 1424



Shiloh Perimeter Landscape Assessment

8/29/2011 9:09:24 AM

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

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HB 1424

July 11, 2011

Honorable Kim Koppelman

State Representative

513 First Avenue NW

West Fargo, ND 58078-1101

Dear Representative Koppelman:

In our telephone discussion, you told me you were surprised to learn that a church in your legislative District recently received a notice of property taxes due on property previously treated as exempt under the property tax exemption for church property. You said you remember 2011 House Bill No. 1246 increased, rather than decreased, the amount of land exempt for church use. Your recollection is accurate.

Under North Dakota Century Code Section 57-02-08(9), through tax year 2010, up to two acres of church property was required to be exempt from taxation if either the church or residence of the minister in charge of services is located on the property. As amended by 2011 House Bill No. 1246, the provision now requires that the land under the church and off-street parking and reasonable landscaping or sidewalk area up to a maximum of two additional acres must be exempted from taxation. In addition, if the residence of the minister in charge of services is on property not adjacent to the church, that residence and out buildings and up to two acres of additional land must be exempt from taxation. It does not appear that a church that was not subject to tax on land in 2010 would become subject to tax on land in 2011 unless the church has acquired additional acreage.

We hope this provides useful information. Please let us know if you require further information.

Sincerely,

John Walstad

Code Revisor



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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LETTER OPINION
2015-L-06

October 21, 2015

The Honorable Kim Koppelman
State Representative
513 1st Ave NW
West Fargo, ND 58078-1101

Dear Representative Koppelman:

Thank you for your letter asking for my opinion on whether N.D.C.C. § 57-02-08(9) is being improperly interpreted as a limitation on the constitutional property tax exemption for religious property contained in N.D. Const. art. X, § 5.

Based on the long-term position of this office that article X, section 5 of the North Dakota Constitution is self-executing and that the exemption is effective regardless of statutory authority, it remains the opinion of this office that subsection 9 of N.D.C.C. § 57-02-08 acts to supplement rather than restrict the constitutional exemption. However, in order to properly assert the constitutional exemption, a claimant bears the burden of proof of establishing the claim and any doubts that may exist are resolved against the claimant. Whether a constitutional property tax exemption exists under any particular circumstances is a question of fact for the local taxing authority to determine.

ANALYSIS

Article X, section 5, N.D. Const., provides that "property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."¹

Even though it has been determined on a number of occasions that this constitutional provision is self-executing,² the Legislature has nevertheless enacted statutes delineating certain provisions regarding property owned by religious organizations and used for religious purposes. This has sometimes caused confusion as to how the constitutional and statutory religious property tax exemptions may co-exist.

¹ N.D. Const. art. X, § 5.

² See, e.g., N.D.A.G. 2007-L-17, N.D.A.G. 2003-L-16, N.D.A.G. 95-F-09, and N.D.A.G. 95-F-05.

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State law provides:

Property exempt from taxation. All property described in this section to the extent herein limited shall be exempt from taxation:

- 9. a. All buildings owned by any religious corporation or organization and used for the religious purposes of the organization, and if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, improved off-street parking or reasonable landscaping or sidewalk area adjoining the main church building, and up to a maximum of five additional acres [2.02 hectares] must be deemed to be property used exclusively for religious purposes, and exempt from taxation, whether the real property consists of one tract or more. If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation.
- b. The exemption for a building used for the religious purposes of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent.³

In essence, you are asking whether N.D.C.C. § 57-02-08(9) is being improperly interpreted as a limitation on the self-executing constitutional property tax exemption contained in N.D. Const. art. X, § 5.⁴

³ N.D.C.C. § 57-02-08.

⁴ I gather from your letter that you are not asserting that N.D.C.C. § 57-02-08(9) is in conflict with N.D. Const. art. X, § 5, but rather that the statute is being incorrectly interpreted. The statute itself is entitled to a conclusive presumption of constitutionality unless it clearly contravenes the federal or state constitutions.

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October 21, 2015
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As you may know, similar questions have arisen in the past and have been the subject of Attorney General opinions in 1981, 1995, 2003, and 2007.⁵ You indicate that there is some confusion on this issue, for example, whether the exemption for religious property set out in N.D.C.C. § 57-02-08(9) is the last word on property tax exemptions for property used for religious purposes. Despite the modification of N.D.C.C. § 57-02-08 in 2011 and 2013,⁶ the pertinent reasoning and conclusions in N.D.A.G. 95-F-05 and other opinions issued by this office still correctly set out the law on this issue and remain the opinion of this office. In other words, **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 contained in N.D.C.C. § 57-02-08(9). The religious property tax exemptions contained in the constitutional provision, as well as in the statute, can constitutionally co-exist without doing violence to either.**⁷ The language of N.D.C.C. 57-02-08(9) addresses outbuildings, additional

As I noted in N.D.A.G. 2003-L-21:

It is presumed when construing a statute that the Legislature intended to comply with the constitutions of North Dakota and of the United States and any doubt must be resolved in favor of a statute's validity. Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 197 (N.D. 1994); Snortland v. Crawford, 306 N.W.2d 614, 626 (N.D. 1981); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 359 (N.D. 1945); N.D.C.C. § 1-02-38(1). This presumption is conclusive unless the statute clearly contravenes the state or federal constitutions. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987); State ex rel. Lesmeister v. Olson, 354 N.W.2d 690, 694 (N.D. 1984).

⁵ N.D.A.G. 2007-L-17, N.D.A.G. 2003-L-16, N.D.A.G. 95-F-09, N.D.A.G. 95-F-05, and N.D.A.G. 81-13,

⁶ 2011 N.D. Sess. Laws ch. 445, §§ 1, 2 (repealing subsection 7 of section 57-02-08 and amending subsection 9 of section 57-02-08); 2011 N.D. Sess. Laws ch. 444, § 1; 2013 N.D. Sess. Laws ch. 441, § 1; 2013 N.D. Sess. Laws ch. 440, § 1.

⁷ As the North Dakota Supreme Court has noted:

We must construe statutes to avoid constitutional conflicts. *E.g.*, Shaver v. Kopp, 545 N.W.2d 170, 173 (N.D. 1996); Basin Elec. Power Coop. v. North Dakota Workers Compensation Bureau, 541 N.W.2d 685, 689 (N.D. 1996). As Peterson v. Peterson, 1997 ND 14, ¶ 26, 559 N.W.2d 826, illustrates, if a statute is capable of two constructions, one that would render it of doubtful constitutionality and one that would not, the constitutional interpretation must be selected. McCabe v. N.D. Workers Comp. Bur., 567 N.W.2d 201, 204 (N.D. 1997).

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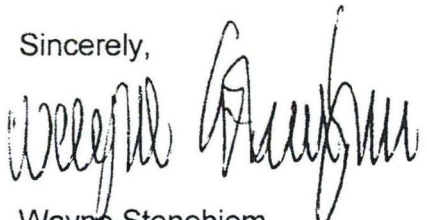
LETTER OPINION 2015-L-06
October 21, 2015
Page 4

dwellings, and expanses of property owned by any religious corporation or organization, and merely states the minimum exception under the constitution, not the maximum.⁸ The taxing authority requires verification from the religious organization regarding the use of the property.

As I explained in a prior opinion:

While the exclusion from taxation for property used for public purposes in Art. X, § 5 of the North Dakota Constitution is self-executing, the burden of establishing that the property comes within this tax exemption is upon the person or entity who claims the exception, and any doubt must be resolved against the claimant. This presents a question of fact for the taxing authority to decide. The city must first determine whether the organization claiming the exemption fits within the exception and, second, whether the property for which the exemption is claimed is exclusively devoted to the exempt purpose.⁹

Consequently, whether a religious entity may properly claim the constitutional property tax exemption depends on the facts and circumstances involved, which the claimant bears the burden of establishing to the proper local taxing authorities.

Sincerely,

Wayne Stenehjem
Attorney General

jif
Enclosures

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.¹⁰

"[I]t is the duty of the court to adopt the construction which, without doing violence to the fair meaning of the statute, will render it valid." Kottsick v. Carlson, 241 N.W.2d 842, 847 (N.D. 1976).

⁸ N.D.C.C. 57-02-08(9).

⁹ N.D.A.G. 2007-L-17.

¹⁰ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

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ND Constitution

Article X, Section 5. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly 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, to the extent immunity from taxation has not been waived by an act of Congress, property of the state, county, and municipal corporations, to the extent immunity from taxation has not been waived by an act of the legislative assembly, and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. Real property used for conservation or wildlife purposes is not exempt from taxation unless an exemption is provided by the legislative assembly. Except as restricted by this article, the legislative assembly 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 until otherwise provided by statute.

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1-31-17
HB 1424

Rep. Koppelman and committee members,

I read with interest HB 1424 and found myself nodding in agreement throughout. This is an important bill that will make it clear that property belonging to churches is tax exempt. All properties that are not being used for profit or leased. All properties.

I have heard that there are still church properties being taxed despite the clear understanding in the Constitution that they are to be tax exempt.

Please correct this error in practice to make sure that church properties--all church properties are not taxed.

I heartily urge you to send this out of committee with a 'do pass'.

With thankfulness for the work you do on behalf of N.D. citizens!

Bill and Gail M. Biby
Argusville, ND

8
1-31-17
HB 1424

John Boustead 703 N 5th st. Bismarck 701-220-1435

Members of the committee, I thank you for the time here to share my heart about H.B 1424

My name is John Boustead, I Pastor a small church of 50 souls here in Bismarck.

Most Pastors understand our forefathers protected the word of God from taxation and in this case it is of course the exemption of property taxes and is written in our North Dakota Constitution.

Secondly they knew full well most churches in ND were small and this is one thing that has not changed in North Dakota.

Having a small church myself, I can witness to the fact of the intense difficulty we have covering annual expenses.

A property tax bill added to small churches can place them in a serious situation of insolvency.

I'd ask you please pas bill 1424.

#9
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January 31, 2017

House Finance and Taxation Committee
RE: HB 1424

This is the third time I have shared testimony in support of church property tax exemption (2011 before this committee, 2013 before the Senate Finance and Taxation Committee). The bill originally proposed in 2013 was amended and is the reason this issue keeps coming up. The points below reiterate my testimony from previous years.

1. **Ministry needs of congregations have changed.** From structures primarily focusing on worship, the ministry of many congregations has expanded to include various additional educational, outreach and community services.
2. **Regulatory requirements have increased.** ADA, parking and retention ponds to handle water runoff require more property.
3. **Good stewardship of resources requires prudent planning for the future.** Taxing religious organizations discourages them from long-term planning.
4. **Development promotes future development.** Larger tracts of land are most available on the outskirts of cities, promoting further city development.
5. Religious organizations pay for special assessments on all property. **Organizations cannot afford to own large tracts of land that are not used or planned for future use.** This tax liability can serve as a disincentive to purchasing more than is needed. Our congregation, for example, has paid more in special assessments for the construction and upgrading of streets than we did for the original property.
6. **Religious organizations serve the public good by helping create stable communities** as well as providing multiple resources to help individuals and families, especially the vulnerable, in times of need. The state of North Dakota has consistently recognized this contribution, just as they have for educational institutions, parks, recreation areas, non-profit hospitals and government agencies, for example. Do we place property limits on these groups?

Thank you for allowing me to testify before your committee. I urge you to pass this important piece of legislation as proposed.

Blessings!



Dr. Randall Jaspers, lead pastor
Temple Baptist Church, 1200 12 Ave. NE, Jamestown, ND 58401
(701) 952.0822 office@jamestowntbc.org

Testimony in Opposition to House Bill 1424
January 31, 2017
House Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Finance and Taxation Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to House Bill 1424. The bill seeks to redefine the property tax exemption for churches.

House Bill 1424 proposes several changes in the church exemption. On Line 13 of Page 1 of the bill the present limitation on landscape and service areas adjacent to the church building is removed. That deletion leaves open to interpretation the amount of area adjacent to the principal structure that is logically supportive of the main building. There needs to be a limitation in our opinion and five acres is rather generous.

On Lines 18-21 of page 1, property used for the residence of a prelate not adjacent to the church is exempt property. The present two acre size limitation on that parcel is sought to be removed. An unlimited acreage would be allowed by the bill as long as the land is not used for a profit-making activity. Two acres is a rather generous lot for a residence but this change allows 40 or more acres for this use to be property tax exempt.

Line 22 of Page 1 through Line 2 of Page 2 seeks to exempt any acreage owned by a religious organization and not leased with a "view to profit" to be property tax exempt. This wholesale exemption of property owned by a religious institution is not related to the exercise of religion. It is a function of ownership. The state has long respected the religious practices of its citizens and the area in which those practices are carried out. But cities furnish services like police, fire and health services to these properties so it is important to keep the exemptions to a reasonable limit.

The North Dakota League of Cities feels the present law allows for a reasonable exemption for active religious purposes and therefore respectfully requests a DO NOT PASS recommendation for House Bill 1424.

#11
1-31-17
HB 1424

Representative Koppelman,

Prairie Heights deeply appreciates the privilege to serve the wonderful people of North Dakota. Our constituents spans a broad spectrum of social and economic backgrounds. However, as you and I have discussed, Prairie Heights is reaching a higher percentage of today marginalized, broken and many in recovery. We believe we are having a direct impact on making people better in family, better in relationships and better citizens of this world.

As you and I have discussed for the past 3+ years, the tax burden placed on the church by the state of North Dakota is both unfair and unnecessarily burdensome.

Prairie Heights purchased land in 2009 in order for it to have a permanent home from which it can conduct its mission. In 2012, we began to be taxed on that land. Part of the change in law, as I understand it was centered on the principle of the use of the land. Since its purchase in 2009, we built a Ministry Center which serves as office space, worship space and space for small groups to meet. In 2012 we subsequently sold off some of the perimeter to help ease the burden of the tax "specials" that were levied because of recent development of new roads.

Since 2012, we have been paying property taxes on the 17 acres because it was over the 2 acre and subsequent 5 acre limit. In 2015, Prairie Heights began building a larger facility. It came to my attention that Prairie Heights has been taxed on the value of that structure, while under construction because "it cannot be used at this point for worship." When it can be used for services, that is when I was informed it and the 5 acre limit would be met, satisfying the requirements to not be taxed.

I was informed that the City of West Fargo's attorney reviewed the Attorney General's opinion. Apparently, there was not enough persuasion to alter the practice of taxing local churches with land they are developing to serve the community.

Prairie Heights is requesting the State Legislature of North Dakota to correct this practice by local ND governments to tax churches. I would be happy to meet with any legislators and explain our situation and the impact we have on the Fargo community. I would welcome any discussion you would like to have regarding the taxation of churches in North Dakota.

Sincerely,

Steve Smith
Operations Pastor
Prairie Heights

Invite • Grow • Serve

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1424

Page 1, line 1, after "57-02-08" insert "and section 57-02-14.1"

Page 1, line 2, after the semicolon insert "to provide for retroactive application;"

Page 1, line 7, overstrike "buildings" and insert immediately thereafter "real property"

Page 2, line 2, after "taxation" insert ". Earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection"

Page 2, after line 6, insert:

"e. If the validity of an assessment is in question, the assessor has the burden of proving the property is not being used for religious purposes.

SECTION 2. AMENDMENT. Section 57-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-14.1. Tax exemption certificate for real property to be filed - Exceptions.

Any person, corporations, limited liability companies, associations, or organizations owning real property located within a municipality which claims that such real property is exempt from assessment and taxation shall file with the assessor and with the county auditor a certificate setting out all facts on which the claim for exemption is based, including the names of owners, the date such property was acquired, the legal description, the use to which the property was put during the twelve months preceding the assessment date, and any other information which the assessor may request. This certificate shall be filed with the assessor and the county auditor each year before the assessment date. If the certificate is not filed as provided herein, the assessor shall regard the property as nonexempt property and shall assess it as such. The provisions of this section shall not apply in any case when the real property is owned by a religious corporation or organization and not leased or otherwise used with a view to profit, the United States, or the state of North Dakota or any of its departments, institutions, agencies, or political subdivisions."

Page 2, line 7, after "DATE" insert "- **RETROACTIVE APPLICATION**"

Page 2, line 7, after "is" insert "retroactively"

Page 2, line 7, after "effective" insert "and applies"

Page 2, line 8, replace "2016" with "2009. The board of county commissioners shall refund taxes under this Act"

Re-number accordingly

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1-31-17

TESTIMONY ON HOUSE BILL 1424

Mr. Chairman and Members of the Committee;

In 2011, this Assembly passed legislation aimed at protecting churches from property taxes. We did this by expanding the definition in law of land mass that it is absolutely forbidden to tax. The result, ironically, was not churches being taxed less, but they quickly began being taxed more! In fact, after passing that legislation, some were taxed for the first time ever. It happened because some saw the legislation not as strengthening the Constitutional prohibition against such taxation, but as a bright line test on what they COULD tax. This not only violated legislative intent, it was clearly unconstitutional.

Two years later, I introduced legislation to attempt to repair the damage and solve the problem. The House understood and, in fact, even strengthened the bill, with amendments, before passing it. The Senate, however, did not accept the House version of the bill.

To its credit, the Senate improved the previous law, extending a two-acre provision in the 2011 legislation to a 5-acre provision. This clearly improved the situation. It helped some churches, but others continue to suffer, again because some see this as a license to tax, rather than a prohibition against taxing. Furthermore, some are interpreting laws and definitions even more strictly than ever before and are taxing property more zealously than ever before.

I'm pleased to be able to tell you that this isn't the case everywhere and, in fact, as I understand it, some areas have no interest in taxing church property and aren't attempting to do so. In other areas, however, churches languish under this unconstitutional exercise of raw taxation power, creating unequal status for churches in our state. This is something our Constitution forbids and our laws should not allow.

That's why I stand before you today, in one more attempt to set things right, to uphold the North Dakota Constitution, to stand up for religious liberty, free from government intrusion, and, sadly, in hope one more time of preempting what I fear will follow if we don't fix this--churches suing political subdivisions in North Dakota for violation of our state's Constitution. I believe that's what the future will hold, if we fail to act.

I truly want to avoid that scenario and hope that you will stand with me in helping to avoid it by passing HB 1424.



North Dakota House of Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative
Kim Koppelman
District 13
513 First Avenue NW
West Fargo, ND 58078-1101
Residence: 701-282-9267
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kkoppelman@nd.gov

Committees:
Agriculture
Political Subdivisions

Let me walk you through the issue:

North Dakota Attorney Generals' Opinions have made it very clear that our Constitution forbids the taxation of church property used for religious purposes.

A 1981 Opinion by AG Robert Wefald states, in part:

"If a church uses real property in excess of two acres* for religious purposes all the land so used even though it is in excess of two acres is eligible for a real estate tax exemption provided that the use of the real property by the church is reasonably necessary and that it is actually used exclusively for religious purposes."

**note that 2 acres was the reference in statute at the time.*

...and "If more than two acres of land are used exclusively for religious purposes, the acreages so used would be exempt under Section 5 of Article X of the Constitution and would not be limited to the two-acre exception created by subsection 9 of section 57-02-08, N.D.C.C. ***In a conflict between a statute and a provision of the Constitution, the Constitution prevails.***"

(emphasis added)

A later Opinion, in 1995, by AG Heidi Heitkamp reaches concurring conclusions, stating, in part:

"the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious purposes by the exemptions in N.D.C.C. 57-02-08 (7) and (9) because Article X, Section 5 is self-executing..."

"...property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature."

"Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature."

"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."

...and "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 that exemption."

(emphasis added)

The intent and effect of the North Dakota Constitution is clear. Property owned by a church to carry out its religious purposes is nontaxable. The Constitution, as noted in the second reference, was amended to clarify that it protects churches from taxation (the self executing provision) and that the Legislature may not limit the exclusion.

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pg 3

The Legislature, accordingly does not have the authority to define or limit a "religious purpose", by acreage or any other means. For the Legislature to have such authority would not only fly in the face of this provision of the North Dakota Constitution, but also the bar in the First Amendment of the United States Constitution against the infringement of religious liberty, in my opinion.

I don't believe, however, that this is an authority that the North Dakota Legislature has necessarily tried to assert. Instead, my investigation and analysis leads me to believe that our Legislature has placed definitions in law which have included acreage, for example, to prevent eager taxing authorities from violating the Constitution and taxing church property; in other words, to clearly define what is absolutely nontaxable, not to imply that property not falling into that description is, in fact, taxable.

The Attorney Generals' Opinions referenced, particularly the latter one, makes this quite clear by asserting that the Constitutional exemption is self-executing. In other words, not only does it not take Legislative action to activate it, but also no action by the Legislature can curtail or restrict it.

This alarming advent of taxation of church property prompted my initial inquiry with the North Dakota Legislative Council. You'll find that the response of the-then Chief Code Reviser, Mr. John Walstad, indicates similar amazement at how anyone could interpret the Legislature's 2011 expansion of non-taxable land as a license to tax more.

The bottom line, from my study and conversations on this matter, is that I believe that taxing authorities are interpreting the law as a "bright line test". They believe the Legislature has told them to tax right up to the point outlined in the law.

The two Attorney Generals' Opinions I've referenced bolster the reading that property owned by churches for religious purposes is nontaxable. They clearly show that the Constitutional principle trumps any specific definition in statute, which means that taxing authorities can--and, I would submit, MUST--refrain from taxing a larger area which still meets the Constitutional definition.

This, however, is not how some North Dakota taxing authorities have apparently responded. Instead, they have descended upon church property with tape measures and aerial photographs to attempt to determine what are they now believe is taxable.

I attempted to resolve this matter by intervening for a church in my district which was being excessively burdened with new taxation. I can furnish you with the letter I wrote

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to the local tax assessor, which contained my analysis of the issue, but you'll have enough paper on this issue, so I haven't included it with my testimony. I also made county and state officials aware of the problem (I'd also make those documents available if you're interested). The result, for this church, was an eventual reduction in the amount that was previously threatened to be taxed, but a large property tax assessment, for the first time ever, nonetheless. This burden forced the church to subdivide and sell some of its lot, because it could not afford the taxes.

The good news is that, after we passed the 2013 legislation, and after it had sold off some of its property, this church was finally able to procure a refund--four years later--of at least some of the taxes which had been inappropriately been imposed. The bad news is that, before this occurred the financial burdens on this church forced it to sell its property.

That's just one church's story but, sadly, there's more bad news--another nearby church was denied such a refund, altogether.

After it became apparently that the Legislation passed in 2013 did not suffice to cure this problem, I sought yet another Attorney General's Opinion. While it once again reaffirmed the Constitutional principle, it placed the burden of proof upon churches, rather than taxing authorities. I believe this is inappropriate and it's clearly something we can correct in statue, so I've included amendments which I'd ask that you'd attach to the bill.

In conclusion, as mentioned earlier, I am told that there have been discussions with legal experts who are ready and willing to represent North Dakota churches on this matter, probably free of charge, to restore their religious freedom and the Constitutional exemption they've been denied. So far, to the best of my knowledge, no lawsuits have ensued, I believe, because those churches are looking to us, in the Legislature, one last time, to correct this problem.

They should be congratulated for their restraint because, it would appear, if such lawsuits ensued (as they may if we fail to act) that the churches would easily win.

No one wants North Dakota churches suing political subdivisions or our state--least of all the churches, themselves. We must prevent that by doing the right thing, through this legislation.

As I've explained, churches are suffering and their influence in our state and communities is being harmed, all because of the heavy hand of unconstitutional

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government taxation. Their potential growth is being thwarted by the very communities they exist to benefit. Land purchased for worship, ministry, and for the growth of churches has been forced to be sold because congregations can't afford the taxes imposed. Many, already burdened with crippling special assessments (often also arguably unwarranted or excessive) are now, for the first time ever, suffering the additional burden of financially-crippling property taxation!

Churches should not cower in fear of their government. The power to tax is the power to destroy. Destroying churches should certainly not be our aim. We should not allow it to be the unintended effect of misinterpretation of our law and Constitution, either.

It's time to ensure that our law clearly matches our Constitution by removing statutory church property definitions, descriptions, or references to acreage. These provisions have apparently misled taxing authorities into the assumption that they have the authority--or, worse yet, the requirement--to tax church property, despite the freedom from this taxation guaranteed by our Constitution.

Mr. Chairman, Members of the Committee, I don't believe, as a legislator, that I've ever seen a clearer opportunity to uphold my oath of office or to "right a wrong" in our government. Our responsibility, now, is to end this practice, once and for all, to make it crystal clear that the North Dakota Legislature upholds the Constitution, as we've each sworn to do, and to ensure that the religious freedom guaranteed by the founders of our state and nation is upheld.

Mr. Chairman and members of the Committee, I respectfully ask you to give HB 1424 a resounding "Do Pass" recommendation to help accomplish this important purpose. Thank you.

Respectfully Submitted,

Rep. Kim Koppelman
West Fargo, ND -- District 13
Chairman, Judiciary Committee,
Past National Chairman, The Council of State Governments (CSG)



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In Title X, Section V of the North Dakota Constitution provides that:

property used exclusively for schools, religious, cemetery,
charitable or other public purposes shall be exempt from taxation.

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Attachment #1B
Pg 1

July 11, 2011

Honorable Kim Koppelman

State Representative

513 First Avenue NW

West Fargo, ND 58078-1101

Dear Representative Koppelman:

In our telephone discussion, you told me you were surprised to learn that a church in your legislative District recently received a notice of property taxes due on property previously treated as exempt under the property tax exemption for church property. You said you remember 2011 House Bill No. 1246 increased, rather than decreased, the amount of land exempt for church use. Your recollection is accurate.

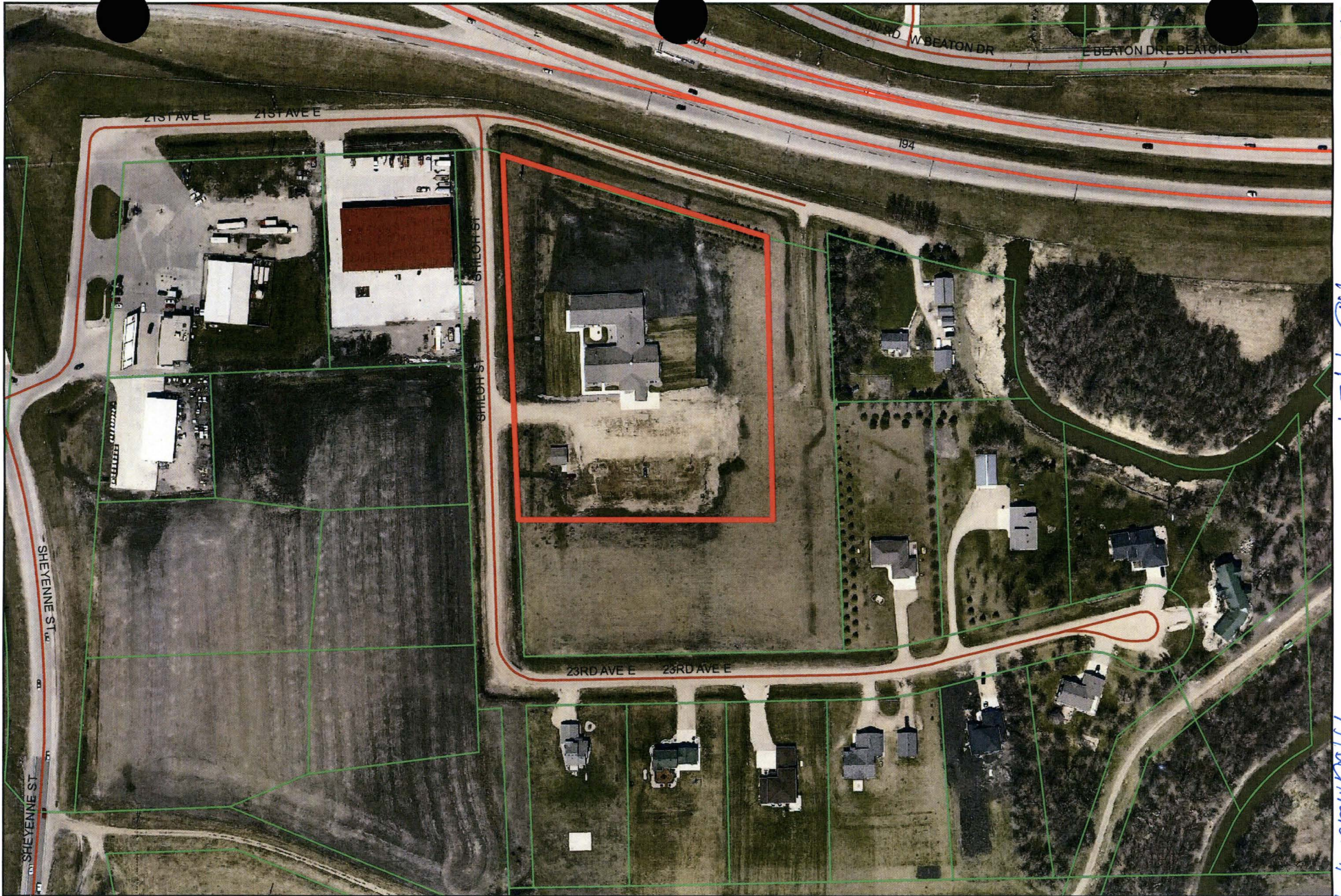
Under North Dakota Century Code Section 57-02-08(9), through tax year 2010, up to two acres of church property was required to be exempt from taxation if either the church or residence of the minister in charge of services is located on the property. As amended by 2011 House Bill No. 1246, the provision now requires that the land under the church and off-street parking and reasonable landscaping or sidewalk area up to a maximum of two additional acres must be exempted from taxation. In addition, if the residence of the minister in charge of services is on property not adjacent to the church, that residence and out buildings and up to two acres of additional land must be exempt from taxation. It does not appear that a church that was not subject to tax on land in 2010 would become subject to tax on land in 2011 unless the church has acquired additional acreage.

We hope this provides useful information. Please let us know if you require further information.

Sincerely,

John Walstad

Code Revisor



3/1/2017

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Attachment # 1C

pg 1



Shiloh Perimeter Landscape Assessment

8/29/2011 9:09:24 AM

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

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Attachment #10

pg 1

17.0934.03001
Title.

Prepared by the Legislative Council staff for
Representative K. Koppelman
March 6, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1424

Page 1, line 3, after the semicolon insert "to provide for retroactive application;"

Page 2, after line 7, insert:

"e. If the validity of an assessment is in question, the assessor has the burden of proving the property is not being used for religious purposes."

Page 2, line 24, after "DATE" insert "- **RETROACTIVE APPLICATION**"

Page 2, line 24, after "is" insert "retroactively"

Page 2, line 24, after "effective" insert "and applies"

Page 2, line 25, replace "2016" with "2010"

Renumber accordingly

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Attachment 1E pg 1

17.0934.03001

FIRST ENGROSSMENT

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1424

Introduced by

Representatives K. Koppelman, Karls, Kasper, B. Koppelman, Marschall, Satrom, Simons
Senators Burckhard, Clemens, D. Larson, Luick, Myrdal

1 A BILL for an Act to amend and reenact subsection 9 of section 57-02-08 and section
2 57-02-14.1 of the North Dakota Century Code, relating to the property tax exemption for
3 property of churches; to provide for retroactive application; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 9 of section 57-02-08 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 9. a. All ~~buildings~~real property owned by any religious corporation or organization and
8 used for the religious purposes of the organization, and if on the same parcel,
9 dwellings with usual outbuildings, intended and ordinarily used for the residence
10 of the bishop, priest, rector, or other minister in charge of services, land directly
11 under and within the perimeter of those buildings, and improved off-street parking
12 ~~or~~and reasonable landscaping or sidewalk area ~~adjoining~~servicing the main church
13 building, ~~and up to a maximum of five additional acres [2.02 hectares]~~ must be
14 deemed to be property used exclusively for religious purposes, and exempt from
15 taxation, whether the real property consists of one tract or more.

16 b. If the residence of the bishop, priest, rector, or other minister in charge of
17 services is located on property not adjacent to the church, that residence with
18 usual outbuildings and land on which it is located, ~~up to two acres [.81 hectare],~~
19 ~~is exempt from taxation~~ and not leased or otherwise used with a view to profit,
20 must be deemed to be property used exclusively for religious purposes and is
21 exempt from taxation.

22 c. Any real property owned by any religious corporation or organization and used to
23 further the religious purposes of the organization and not leased or otherwise
24 used with a view to profit must be deemed to be property used exclusively for

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Attachment #1 E

1 religious purposes and exempt from taxation. Earnings derived from the provision
2 of goods or services on property owned by a religious corporation or organization
3 may not be viewed as profits for purposes of this subsection.

4 b.d. The exemption for a building used for the religious purposes of the owner
5 continues to be in effect if the building in whole, or in part, is rented to another
6 otherwise tax-exempt corporation or organization, provided no profit is realized
7 from the rent.

8 e. If the validity of an assessment is in question, the assessor has the burden of
9 proving the property is not being used for religious purposes.

10 **SECTION 2. AMENDMENT.** Section 57-02-14.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **57-02-14.1. Tax exemption certificate for real property to be filed - Exceptions.**

13 Any person, corporations, limited liability companies, associations, or organizations owning
14 real property located within a municipality which claims that such real property is exempt from
15 assessment and taxation shall file with the assessor and with the county auditor a certificate
16 setting out all facts on which the claim for exemption is based, including the names of owners,
17 the date such property was acquired, the legal description, the use to which the property was
18 put during the twelve months preceding the assessment date, and any other information which
19 the assessor may request. This certificate shall be filed with the assessor and the county auditor
20 each year before the assessment date. If the certificate is not filed as provided herein, the
21 assessor shall regard the property as nonexempt property and shall assess it as such. The
22 provisions of this section shall not apply in any case when the real property is owned by a
23 religious corporation or organization and not leased or otherwise used with a view to profit, the
24 United States, or the state of North Dakota or any of its departments, institutions, agencies, or
25 political subdivisions.

26 **SECTION 3. EFFECTIVE DATE - RETROACTIVE APPLICATION.** This Act is retroactively
27 effective and applies for taxable years beginning after December 31, ~~2016~~2010.

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Attachment # 2 pg 1

Kim,

Thanks for your work on this. I know you and Vern have been in conversation. As he is on vacation, I thought I'd make a few comments, hoping they would be helpful.

On behalf of our congregation in West Fargo, we are grateful that the legislature is considering means by which to preserve the mutually beneficial relationship between places of worship and our community. Like most communities of faith, we take seriously our call to be a positive contributor to our community. Our mission is to bring wholeness to individuals and families. We are glad when our facility is utilized to support community functions, from hosting programs for much needed daycare providers to providing space on our property for the Boy Scouts to set up their Christmas Tree fundraiser.

Like many non-profits, we depend on the generosity of people who appreciate what we do. These are taxpayers who already do their share. We believe that adding a tax burden to faith communities would be a strategy of revenue production that would be very counter productive in terms of the well being of West Fargo and the communities of North Dakota.

We ask that you pass HB 1424 as a means of preserving the healthy and beneficial impact of non-profits and faith communities in North Dakota.

Sincerely,
Rev. Jeff Seaver
Senior Pastor, Triumph Lutheran Brethren Church

3/7/2017

HB 1424

Attachment # 3 pg 1

March 7, 2017

Senate Finance and Taxation Committee
RE: HB 1424

This is the fourth time I have shared testimony in support of church property tax exemption (2011 & 2017 before the House Finance and Taxation Committee, 2013 & today before this committee). Some churches are improperly assessed property taxes. The points below reiterate my previous testimony why churches should be exempt.

1. **Ministry needs of congregations have changed.** From structures primarily focusing on worship, the ministry of many congregations has expanded to include various additional educational, outreach and community services.
2. **Regulatory requirements have increased.** ADA, parking and retention ponds to handle water runoff require more property.
3. **Good stewardship of resources requires prudent planning for the future.** Taxing religious organizations discourages them from long-term planning.
4. **Development promotes future development.** Larger tracts of land are most available on the outskirts of cities, promoting further city development.
5. Since **religious organizations** pay special assessments on all property, they **cannot afford to own large tracts of land that are not used or planned for future use.** This serves as a natural limit to purchasing too much property. Our congregation, for example, has paid more in special assessments for the construction and upgrading of streets than we did for the original property.
6. **Religious organizations serve the public good by helping create stable communities** as well as providing multiple resources to help individuals and families, especially the vulnerable, in times of need. The state of North Dakota has consistently recognized this contribution, just as they have for educational institutions, parks, recreation areas, non-profit hospitals and government agencies, for example. Do we place property limits on these groups?

Thank you for allowing me to testify before your committee. I urge you to pass this important piece of legislation as proposed.

Blessings!



Dr. Randall Jaspers, lead pastor
Temple Baptist Church, 1200 12 Ave. NE, Jamestown, ND 58401
(701) 952.0822 office@jamestowntbc.org

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HB 1424

Attachment # 3A pg 1

Bismarck Baptist Church is located at 2211 LaForest Ave. in Bismarck. Our land was purchased and the church structure was built in 1965. The unpaved portion of church property on the south side is approximately 40' X 140'. (See map view on reverse).

This portion of our property is occupied by a garage which stores the church bus/van along with property maintenance equipment. The property is also used for occasional youth and children's ministry activities, church picnic style events, and potential parking overflow. This area is also the destination for snow removed from the parking lot.



Finally, this land has always been strategically held in case growth or building expansion requires more parking.

For at least the last decade, the City of Bismarck has determined that this land is not intended for ministry purposes and therefore deemed to be subject to property taxes. The church is paying around \$2000 per year beyond special assessments in property taxes. Initial conversations with City officials has been met with firm refusal to view this land as part of our ministry purpose and plan.

The church is mystified at this determination as the City's position:

1. is inaccurate to the church's actual use and intent,
2. is inconsistent to what sister churches in Bismarck are assessed for the undeveloped portion of their property, and
3. appears to run counter to current state law

Respectfully,

Bryan Hochhalter 3-6-17

Bryan Hochhalter, Lead Pastor
Bismarck Baptist Church (701) 223-4445

Google Maps



Imagery ©2017 Google, Map data ©2017 Google 50 ft

3/7/2017

HB 1424

Attachment # 4 pg 1

**Testimony on House Bill 1424
by Family Policy Alliance of North Dakota
March 7, 2017**

Good morning Chairman Cook and honorable members of the Senate Finance and Taxation Committee. My name is Mark Jorritsma, Executive Director of Family Policy Alliance of North Dakota. I am testifying on behalf of our organization and the thousands of our constituents across our great state for you to please recommend a "DO PASS" on House Bill 1424.

This bill seeks to exempt all real property owned by a religious organization from property taxes, not just improvements such as buildings, as the North Dakota law now stands. There are a number of reasons why this bill makes sense to enact into law.

Legal Precedent

First, there is a long history of tax exemptions on all real property for religious organizations. US churches received an official federal income tax exemption in 1894, and they have been unofficially tax-exempt since the country's founding.¹ Further, taxation of all real property owned by religious organizations was embodied in a 1970 Supreme Court decision. A nearly unanimous Court sustained a state exemption from real or personal property taxation of "property used exclusively for religious, educational or charitable purposes" owned by a corporation or association which was conducted exclusively for one or more of these purposes and did not operate for profit.² Moreover, requiring churches to pay taxes endangers the free expression of religion and violates the Free Exercise Clause of the First Amendment of the US Constitution. By taxing churches, the government is empowered to penalize or shut religious organizations down if they default on their payments. The US Supreme Court confirmed this in *McCulloch v. Maryland* (1819) when it stated: "the power to tax involves the power to destroy".³

Revenue Implications

The revenue implications of enacting this bill into law will vary from jurisdiction to jurisdiction, although state-wide they may not be extremely burdensome. The State of North Dakota would not experience any reduction in tax revenue from passage of this bill. Moreover, while there would be some impacts to local jurisdictions, the additional real property of religious organizations addressed by this bill likely represents a relatively small portion of the property tax base in many taxing districts. It is reasonable to assume that the majority of local property taxes come from residential and commercial properties, since these properties have higher market values and are more extensive than the additional real property this bill seeks to exempt.

¹ <https://www.irs.gov/pub/irs-soi/tehistory.pdf>

² *Walz v. Tax Comm'n*, 397 U.S. 664 (1970).

³ John Marshall, US Supreme Court opinion, *McCulloch v. Maryland*, supreme.justia.com, 1819

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Attachment # 4

In addition, poor and disadvantaged people relying on assistance from their local religious organizations suffer when churches are taxed. Crucial services are eliminated or relegated to local governments if religious organizations are taxed on portions of their real property. By allowing a tax exemption for all real property, these organizations could increase their capacity to help local communities, and thereby actually reduce some public service demands and associated costs to local jurisdictions. This could potentially negate a portion of whatever local revenue impacts would occur for some jurisdictions as a result of this bill.

Donor Intent

When individuals donate to religious organizations, they understand that their donations are tax exempt. If we now tax a portion of the religious organization's property, as we currently do, the donor intent is no longer upheld. Aside from their personal tax exemption, we believe that most donors to religious organizations would be very surprised and upset that their donations are actually taxed "further down the line". It is fair to say that they want their donations to be used in whole for the operation of the religious organization, which under current North Dakota law does not happen.

Consistency

Taxation of a portion of a religious organization's real property is internally inconsistent. There is no defensible basis for taxing only a portion of the real property, while excluding another portion from taxation.

Conclusion

Taxation of a portion of a religious organization's real property is inconsistent with past Supreme Court rulings, will likely not have extensive impacts on taxing jurisdictions' revenues, undermines donor intent, and is internally inconsistent. For these reasons, I respectfully ask this committee to render a "DO PASS" recommendation on House Bill 1424. Thank you for your time, and I stand ready for any questions you might have.

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Attachment #5

pg 1

NORTH DAKOTA SENATE FINANCE AND TAXATION COMMITTEE

3/7/2017

House Bill No. 1424

TO: Senator Cook, Chairman of Senate Finance and Taxation Committee

FROM: Kevin Ternes, Minot City Assessor

Thank you for accepting my testimony on behalf of House Bill No. 1424.

It would seem this bill in my opinion would allow a religious organization/corporation and all property they own to be exempt without even having to file an exemption certificate. It also would seem to allow basically all real property owned by a religious corporation or organization to be exempt except with a narrow exception. It also states that *"earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection."*

Some scenarios I would see are land that is purchased for a future church would be exempt. Even if unused for years. Land/crop land donated to a church by an estate etc. could be kept by the church/organization and crops taken off and sold, exempt and removed from the tax roll in perpetuity. I imagine this could be of significance in smaller counties and townships.

Land subdivided and then sold for commercial or residential development would appear to be exempt with the present wording.

In Minot, this bill would have in the past and/or presently remove hundreds of thousands of dollars in valuation from the tax roll.

Would religious colonies that own farmland, multi-million dollar shop buildings and housing that raise produce, grain, livestock or do shop repairs on equipment in certain buildings they own be exempt?

For those who insist that all land owned by a religious organization should be allowed total exemption based on the state constitution, a recent ND Attorney General's opinion in 2015 states the following:

"it remains the opinion of this office that subsection 9 of N.D.C.C. § 57-02-08 acts to supplement rather than restrict the constitutional exemption.".....

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HB 1424

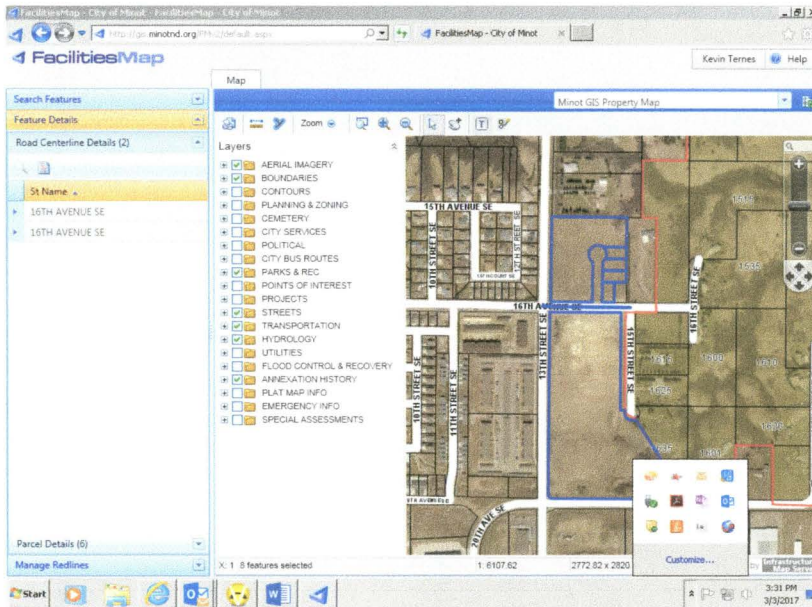
Attachment #5 pg 2

.... "Consequently, whether a religious entity may properly claim the constitutional property tax exemption depends on the facts and circumstances involved, which the claimant bears the burden of establishing to the proper local taxing authorities.

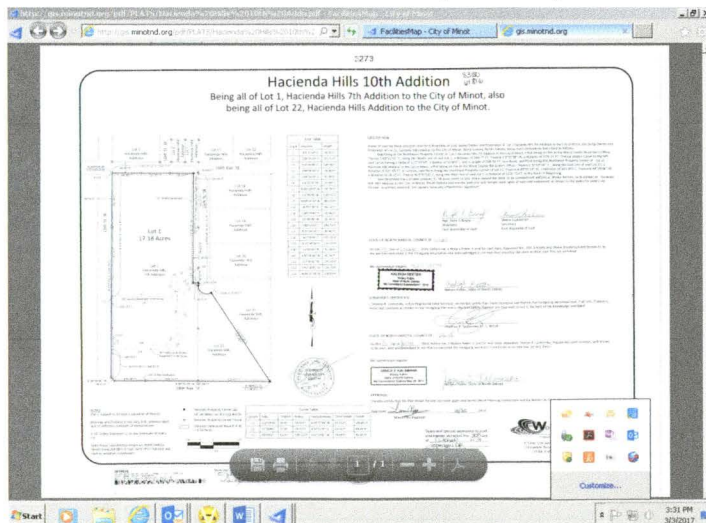
Examples of property that would have recently been or would be presumed to be exempt under this proposed bill are included below:

Platted Development by First Assembly of God Church in Minot.

Land being assessed that is not being used for religious purposes is currently paying about \$24,350 per year being split between city, county, park and school. I have displayed the map and plat of this example below.



Minot Vacant Land under Development by Church. No church on the premises.



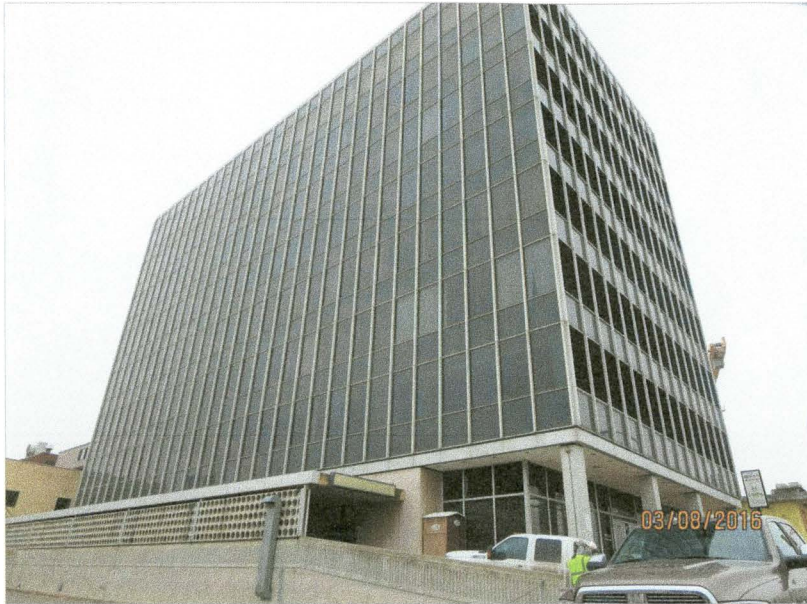
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Minot Vacant Land under Development by Church

Eight story office building owned by a religious corporation from California owned for 10 years until recently sold. Would have exempted approximately \$120,000 in property tax dollars which was divided among school, county, park and city. Picture of the building is shown below.



Minot Property

I have been told by Burleigh County that in Bismarck, the University of Mary owns a Ramada Inn, the Red Carpet car wash and a Hardees. They were given these properties as a gift but it certainly could be suggested as taking the profits to "further the religious purpose of the organization". Estimated property taxes on these properties is approximately \$86,000 per year. Would this bill consider these as exempt and if not why not?

It's not that difficult to become an ordained minister. At what point can that process be used to avoid property tax? Would this bill make that easier?

A few additional questions I would ask about HB 1424:

Would it be possible to determine just how this bill would affect budgets from counties and schools that have large, religious organization owned, multi-million dollar operations and complexes in them?

Does a tax exemption with no sunset give these types of operations a tax advantage over other comparable non-exempt shops and producers?

Would it give churches a tax advantage over other smaller land developers?

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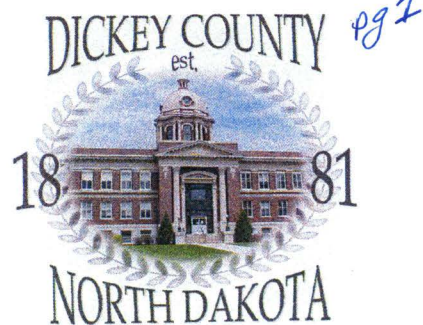
Would leasing of office space from a church owned office building downtown be considered a good or service per section c, because if so then it would seem an entire office building could be considered exempt and therefore be in competition with other office space?

Is there a definition of a religious corporation or organization in state statute?

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HB 1424

Attachment #6



OFFICE OF TAX EQUALIZATION
P. O. Box 393
Ellendale ND
58436
Phone: (701) 349-3249 Ext. 7
E-mail: dflaherty@nd.gov

March 7, 2017

2017 Senate Finance and Taxation Committee
Honorable Senator Dwight Cook, Chairman
North Dakota State Capitol

Dear Senator Cook and Members of the Senate Finance and Taxation Committee:

My name is Don Flaherty and I am the Director of Tax Equalization for Dickey County. I am writing you today to speak against HB 1424. I believe that the proposed changes to subsection 9 of 57-02-08 to expand the property tax exemption for religious corporations or organizations is simply too far reaching and in direct conflict with the concept of equal taxation for all citizens of the State of North Dakota.

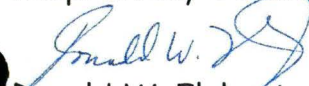
The most egregious portion of this bill is the introduction of a new letter "c" (Lines 22-24 on page 1 and Lines 1-3 on page 2). I asked the State's Attorney for Dickey County to render an opinion of this new wording in relation to the Hutterite Colonies located within Dickey County and he stated that if this bill were to become law in its present form then ALL PROPERTY owned by a Hutterite Colony would be exempt from ad valorem tax.

Currently there are two active Hutterite Colonies within our county and a third that is in the beginning stages of development. If adopted, 17,959.28 acres of agricultural land with a True and Full Value of \$20,453,700 would become exempt. This would cause a tremendous shift in the property tax burden within my county and also increase the economic impact on the average farmer who now would have to compete against an organization in the sale of their agricultural products who by this exemption would have a much lower operating expense.

The aspects of this legislation have a much further reach than is commonly understood and would have a huge impact on a number of counties within the state.

Therefore I would strongly urge each of you to vote against HB 1424 in its current form.

Respectfully Submitted,


Donald W. Flaherty

Dickey County Director of Tax Equalization

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HB 1424

Attachment # 7 pg 2

Testimony to the
Senate Finance & Taxation Committee
March 6, 2017
Commissioner Rick Steen, Cass County Commission

Regarding: HB 1424 – All church property tax exempt even if revenue generating

Chairman Cook and committee members, I am Commissioner Rick Steen of the Cass County Commission and I am here to testify against House Bill 1424.

HB 1424 provides that a religious corporation or organization will not be required to file a property tax exemption certificate and all real property owned by said entity and not leased or otherwise used with a view to a profit will be exempt from property taxes. All owners of property looking to exempt property from taxation should be required to file an exemption certificate providing for due process by the taxing authority to assess the validity of the request. Furthermore, it states, "*Earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection.*"

The language detailed in HB 1424 is ambiguous at times. The proposed amendment to Page 2, Line 2 of the bill which states "*Earnings derived from the provision of goods or services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection.*" does not limit the exemption from income to just income from property that is considered to be used to further the religious purposes of the organization and is not leased or otherwise used with a view to a profit or deemed to be property used exclusively for religious purposes..." If the property is being used in a business manner with a view to profits, and is the property is not being used exclusively for religious purposes, the profits should NOT be exempt from taxation just because the profits inure to a religious organization.

The change in statute may create numerous inequities amongst religious and non-religious organizations competing in the same market, for example:

- Land subdivided by a church and sold for development would be exempt from taxation.
- Crops harvested on land owned by or donated to a church would be exempt from the tax roll.
- A religious colony could create a compelling argument that it is a religious organization/corporation. This would lead to the exemption of numerous commercial and agricultural endeavors amongst their colonies.
- Churches could potentially own a revenue producing business and all of the revenue would be considered use for religious purposes.

This appears to be poor tax policy because you are treating activities such as development of land and income producing properties differently depending on the ownership of the property.

Thank you for the opportunity to address this and I urge you to recommend a do not pass for HB 1424.

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HB 1424

Attachment #8 pg1

Testimony in Opposition to Engrossed House Bill 1424
March 7, 2017
Senate Finance and Taxation Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the House Finance and Taxation Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in opposition to Engrossed House Bill 1424. The bill seeks to redefine the property tax exemption for churches.

House Bill 1424 proposes several changes in the church exemption. On Line 13 of Page 1 of the bill the present limitation on landscape and service areas adjacent to the church building is removed. That deletion leaves open to interpretation the amount of area adjacent to the principal structure that is logically supportive of the main building. There needs to be a limitation in our opinion and five acres is rather generous.

On Lines 16-21 of page 1, property used for the residence of a prelate not adjacent to the church is exempt property. The present two acre size limitation on that parcel is sought to be removed. An unlimited acreage would be allowed by the bill as long as the land is not used for a profit-making activity. Two acres is a rather generous lot for a residence but this change allows 40 or more acres for this use to be property tax exempt.

Proponents of this bill point out that Article X, Section 5 of the North Dakota Constitution directs that "property used exclusively for schools, religious, cemetery, charitable or other purposes shall be exempt from taxation." Some say this means that if a parcel of land is owned by a religious entity it is exempt from paying property tax. Others argue that so long as revenue produced on the land is used for religious purposes the site should be property tax exempt. I will call your attention to two words in this section of the Constitution: "used exclusively."

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The North Dakota Attorney General has issued opinions on this issue several times and most recently in 2015. He has explained 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 contained in N.D.C.C. § 57-02-08(9). The religious property tax exemptions contained in the constitutional provision, as well as in the statute, can constitutionally co-exist without doing violence to either. The language of N.D.C.C. 57-02-08(9) addresses outbuildings, additional dwellings, and expanses of property owned by any religious corporation or organization, and merely states the minimum exception under the constitution, not the maximum. The taxing authority requires verification from the religious organization regarding the use of the property.”

In a more practical and real world sense, acreages were assigned so assessors would have some sort of yardstick to use in administering the religious property tax exemption. The Legislature passed the existing law to make clear what it felt was property “used exclusively” for religious purposes and therefore exempt from property tax under the cited provision in the Constitution. As explained by the Attorney General, if a church or religious organization feels the acreage limitations are insufficient, it can apply to the taxing entity and explain why additional property is used exclusively for religious purposes.

Line 22 of Page 1 through Line 3 of Page 2 seeks to exempt any acreage owned by a religious organization and not leased with a “view to profit” to be property tax exempt. This wholesale exemption of property owned by a religious institution is not related to the exercise of religion. It is a function of ownership. The state has long respected the religious practices of its citizens and the area in which those practices are carried out. But cities furnish services like police, fire and health services to these properties so it is important to keep the exemptions to a reasonable limit.

Finally, House Bill 1424 as it was amended and is before you for final consideration removes the presumption of use of the property in granting the exemption and substitutes an ownership criteria so long as the property is not used “with a view to

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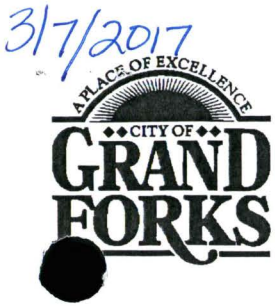
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pg 3

profit". This new "view to a profit" language is somewhat ambiguous and I am concerned it will be difficult for assessors to make a determination on an exemption using this language. The new language changes the definition of property that should be exempt from property tax from the Constitution's "used exclusively" for religious purposes standard to an accounting test that may be difficult to manage. Using this new language, could a church own a shopping center so long as all the net profit was donated to its charities? Would a rancher who raises several head of cattle to maturity for a religious charity be tax exempt?

The North Dakota League of Cities feels we have an existing statute that defines property used exclusively for religious purposes in terms all can understand. We believe the proposed bill, though well intentioned, will move us in the wrong direction. We therefore respectfully request a DO NOT PASS recommendation for House Bill 1424.



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pg 1

Michael R. Brown
Mayor

City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

(701) 746-2607
Fax: (701) 787-3773

TESTIMONY ON HOUSE BILL 1424

North Dakota House Finance and Taxation Committee

**Paul Houdek, City Assessor
City of Grand Forks, ND**

March 6, 2017

Mr. Chairman and members of the committee, my name is Paul Houdek, and I am the Grand Forks City Assessor. I want to thank you for the opportunity to provide testimony and express my concern and opposition to this legislation and what is, perhaps its unintended consequences.

This bill blurs the line between property owned by a religious organization and used for religious purposes, and property simply owned by a religious organization and not used for religious purposes.

While reading the bill on page 2, lines 1-3 say, *Earnings derived from the provision of goods and services on property owned by a religious corporation or organization may not be viewed as profits for purposes of this subsection.*

This language is vague and I believe this would have many unintended consequences. "...Religious corporation or organization..." is a very vague term. This would lead to properties being owned by a religious corporation or organization claiming an exemption while making a profit on a property that has been donated to them. Currently, property exempt as owned by a religious organization must meet two tests, ownership and use. It must be owned by a religious organization and used for religious purposes. We feel these tests work well and should be maintained.

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pg 2

Secondly, page 2, lines 21-23 of the bill states, *the provisions of this section shall not apply in any case when the real property is owned by a religious corporation or organization and not leased or otherwise used with a view to profit.*

Each year we send exemption application forms to each religious organization that qualifies for this exemption to certify the organization still owns the property and it is still used for religious purposes. They must sign and return the form to claim the exemption. This process is important to make sure that the property is still owned by the religious organization and is used for religious purposes. It meets the ownership and use test. As I read it, this bill would eliminate the need for a religious organization to apply annually for this exemption. Without that application process, it would be very difficult to track if it is still owned by the church and used for religious purposes.

Lastly, there is no definition in Century Code as to what is a religious corporation or organization. Any property owner could potentially create a religious corporation or organization and transfer property to this entity. Under this bill, all the property deeded to the religious corporation or organization could then potentially claim the exemption on all property.

To recap, as I read the bill it appears to reduce the test for the religious exemption to simple ownership and also removes the need for the property to be "used" for religious purposes. Secondly, it removes the need for any religious entity to annually apply for the exemption. Lastly, there is no definition in Century Code as to what is a religious corporation or organization. This bill will make it more difficult to deny a religious exemption and I believe will most certainly cause properties generating a profit, and not used for religious purposes to be removed from the tax rolls.

It is for these reasons that I would recommend a DO NOT PASS recommendation of House Bill 1424.

Thank you for your consideration.

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HB 1424

Attachment #8B
pg 1

Legal Description Information

PARCEL NUMBER.....25 0000 03866 000
 SERIAL/STATEMENT NUMBER..00003944
 TWP/CITY #..... 25 RHAME TOWNSHIP
 ADDITION..... RHAME TOWNSHIP
 BLOCK..... SEC-TWSP-RANGE.....16-132-104
 LONG LEGAL.....NE1/4 SEC. 16-132-104- FIRST LUTHERAN CHURCH
 ACRES: FARM... 160.00 RES... COM... NWT...
 TOTAL... 160.00 EXEMPT...
 STATUS...ACTIVE CLASSIFICATION.....REGULAR PARCEL

Value Fields of Property

002. YEAR OF VALUES.....2016 TYPE.....TL TOTAL VALUE
 DISTRICT.....2501030100 RHAME/BOWMAN/RHAME MILLS-164.68
 00 00 BOWMAN COUNTY MILLS.. 48.47 TAX.. 172.661866
 01 01 STATE MEDICAL CENTER MILLS.. 1.00 TAX.. 3.562242
 05 25 RHAME TOWNSHIP MILLS.. 12.99 TAX.. 46.273523
 15 01 BOWMAN SCHOOL DISTRICT #1 MILLS.. 86.82 TAX.. 309.273844
 20 03 RHAME FIRE DISTRICT MILLS.. 3.50 TAX.. 12.467847
 00 68 SOIL CONSERVATION BOWMAN/SLOPE MILLS.. 2.50 TAX.. 8.905605
 00 72 SW WATER AUTHORITY MILLS.. 1.00 TAX.. 3.562242
 00 58 COUNTY LEAFY SPURGE & WEED CTR MILLS.. 3.00 TAX.. 10.686726
 00 64 WATER RESOURCE DISTRICT MILLS.. 1.60 TAX.. 5.699587
 00 60 COUNTY LIBRARY MILLS.. 1.33 TAX.. 4.737782
 35 01 BOWMAN COUNTY AMBULANCE MILLS.. 2.47 TAX.. 8.798738
 ASSESSOR VALUE..... 80,957 GOVERNING BODY..... 80,957
 COUNTY VALUE..... 80,957 STATE VALUE..... 80,957
 ASSESSED VALUE..... 40,479 TAXABLE VALUE..... 4,048
 HOMESTEAD CREDIT.... CONSOLIDATED TAX..... 586.63
 001. YEAR OF VALUES.....2016 TYPE.....FM AGRICULTURAL LAND VALUE
 ASSESSOR VALUE..... 80,957 GOVERNING BODY..... 80,957
 COUNTY VALUE..... 80,957 STATE VALUE..... 80,957
 ASSESSED VALUE..... 40,479 TAXABLE VALUE..... 4,048
 HOMESTEAD CREDIT.... CONSOLIDATED TAX..... 666.62

Names Attached to Property

001. NAME.....FIRST LUTHERAN CHURCH
 ADDRESS LINE 1.....P. O BOX 146
 CITY/STATE/ZIP.....RHAME ND 58651
 TAX LIST..Y OWNER.....Y STATEMENT.Y CONTRACT..N
 MRTGE.....N OTHER.....N PER CENT..

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Attachment #8C
Pg 1

**LETTER OPINION
2015-L-06**

October 21, 2015

The Honorable Kim Koppelman
State Representative
513 1st Ave NW
West Fargo, ND 58078-1101

Dear Representative Koppelman:

Thank you for your letter asking for my opinion on whether N.D.C.C. § 57-02-08(9) is being improperly interpreted as a limitation on the constitutional property tax exemption for religious property contained in N.D. Const. art. X, § 5.

Based on the long-term position of this office that article X, section 5 of the North Dakota Constitution is self-executing and that the exemption is effective regardless of statutory authority, it remains the opinion of this office that subsection 9 of N.D.C.C. § 57-02-08 acts to supplement rather than restrict the constitutional exemption. However, in order to properly assert the constitutional exemption, a claimant bears the burden of proof of establishing the claim and any doubts that may exist are resolved against the claimant. Whether a constitutional property tax exemption exists under any particular circumstances is a question of fact for the local taxing authority to determine.

ANALYSIS

Article X, section 5, N.D. Const., provides that "property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."¹

Even though it has been determined on a number of occasions that this constitutional provision is self-executing,² the Legislature has nevertheless enacted statutes delineating certain provisions regarding property owned by religious organizations and used for religious purposes. This has sometimes caused confusion as to how the constitutional and statutory religious property tax exemptions may co-exist.

¹ N.D. Const. art. X, § 5.

² See, e.g., N.D.A.G. 2007-L-17, N.D.A.G. 2003-L-16, N.D.A.G. 95-F-09, and N.D.A.G. 95-F-05.

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pg 2

LETTER OPINION 2015-L-06

October 21, 2015

Page 2

State law provides:

Property exempt from taxation. All property described in this section to the extent herein limited shall be exempt from taxation:

....

9. a. All buildings owned by any religious corporation or organization and used for the religious purposes of the organization, and if on the same parcel, dwellings with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of services, land directly under and within the perimeter of those buildings, improved off-street parking or reasonable landscaping or sidewalk area adjoining the main church building, and up to a maximum of five additional acres [2.02 hectares] must be deemed to be property used exclusively for religious purposes, and exempt from taxation, whether the real property consists of one tract or more. If the residence of the bishop, priest, rector, or other minister in charge of services is located on property not adjacent to the church, that residence with usual outbuildings and land on which it is located, up to two acres [.81 hectare], is exempt from taxation.
- b. The exemption for a building used for the religious purposes of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax-exempt corporation or organization, provided no profit is realized from the rent.³

In essence, you are asking whether N.D.C.C. § 57-02-08(9) is being improperly interpreted as a limitation on the self-executing constitutional property tax exemption contained in N.D. Const. art. X, § 5.⁴

³ N.D.C.C. § 57-02-08.

⁴ I gather from your letter that you are not asserting that N.D.C.C. § 57-02-08(9) is in conflict with N.D. Const. art. X, § 5, but rather that the statute is being incorrectly interpreted. The statute itself is entitled to a conclusive presumption of constitutionality unless it clearly contravenes the federal or state constitutions.

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LETTER OPINION 2015-L-06

October 21, 2015

Page 3

As you may know, similar questions have arisen in the past and have been the subject of Attorney General opinions in 1981, 1995, 2003, and 2007.⁵ You indicate that there is some confusion on this issue, for example, whether the exemption for religious property set out in N.D.C.C. § 57-02-08(9) is the last word on property tax exemptions for property used for religious purposes. Despite the modification of N.D.C.C. § 57-02-08 in 2011 and 2013,⁶ the pertinent reasoning and conclusions in N.D.A.G. 95-F-05 and other opinions issued by this office still correctly set out the law on this issue and remain the opinion of this office. In other words, 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 contained in N.D.C.C. § 57-02-08(9). The religious property tax exemptions contained in the constitutional provision, as well as in the statute, can constitutionally co-exist without doing violence to either.⁷ The language of N.D.C.C. 57-02-08(9) addresses outbuildings, additional

As I noted in N.D.A.G. 2003-L-21:

It is presumed when construing a statute that the Legislature intended to comply with the constitutions of North Dakota and of the United States and any doubt must be resolved in favor of a statute's validity. Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 197 (N.D. 1994); Snortland v. Crawford, 306 N.W.2d 614, 626 (N.D. 1981); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 359 (N.D. 1945); N.D.C.C. § 1-02-38(1). This presumption is conclusive unless the statute clearly contravenes the state or federal constitutions. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987); State ex rel. Lesmeister v. Olson, 354 N.W.2d 690, 694 (N.D. 1984).

⁵ N.D.A.G. 2007-L-17, N.D.A.G. 2003-L-16, N.D.A.G. 95-F-09, N.D.A.G. 95-F-05, and N.D.A.G. 81-13,

⁶ 2011 N.D. Sess. Laws ch. 445, §§ 1, 2 (repealing subsection 7 of section 57-02-08 and amending subsection 9 of section 57-02-08); 2011 N.D. Sess. Laws ch. 444, § 1; 2013 N.D. Sess. Laws ch. 441, § 1; 2013 N.D. Sess. Laws ch. 440, § 1.

⁷ As the North Dakota Supreme Court has noted:

We must construe statutes to avoid constitutional conflicts. *E.g.*, Shaver v. Kopp, 545 N.W.2d 170, 173 (N.D. 1996); Basin Elec. Power Coop. v. North Dakota Workers Compensation Bureau, 541 N.W.2d 685, 689 (N.D. 1996). As Peterson v. Peterson, 1997 ND 14, ¶ 26, 559 N.W.2d 826, illustrates, if a statute is capable of two constructions, one that would render it of doubtful constitutionality and one that would not, the constitutional interpretation must be selected. McCabe v. N.D. Workers Comp. Bur., 567 N.W.2d 201, 204 (N.D. 1997).

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LETTER OPINION 2015-L-06

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dwellings, and expenses of property owned by any religious corporation or organization, and merely states the minimum exception under the constitution, not the maximum.⁸ The taxing authority requires verification from the religious organization regarding the use of the property.

As I explained in a prior opinion:

While the exclusion from taxation for property used for public purposes in Art. X, § 5 of the North Dakota Constitution is self-executing, the burden of establishing that the property comes within this tax exemption is upon the person or entity who claims the exception, and any doubt must be resolved against the claimant. This presents a question of fact for the taxing authority to decide. The city must first determine whether the organization claiming the exemption fits within the exception and, second, whether the property for which the exemption is claimed is exclusively devoted to the exempt purpose.⁹

Consequently, whether a religious entity may properly claim the constitutional property tax exemption depends on the facts and circumstances involved, which the claimant bears the burden of establishing to the proper local taxing authorities.

Sincerely,

Wayne Stenehjem
Attorney General

jjf
Enclosures

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.¹⁰

"[I]t is the duty of the court to adopt the construction which, without doing violence to the fair meaning of the statute, will render it valid." Kottsick v. Carlson, 241 N.W.2d 842, 847 (N.D. 1976).

⁸ N.D.C.C. 57-02-08(9).

⁹ N.D.A.G. 2007-L-17.

¹⁰ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).