

2011 HOUSE FINANCE AND TAXATION

HB 1370

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1370
February 14, 2011
#14481

Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to the property tax exemption for church property; and to provide an effective date.

Minutes:

See attached testimony #1, #2, #3

Representative Mark Dosch: Sponsor. Support. This bill is being introduced because I talked with constituents who have had problems with regards to the amount of land that is considered tax exempt for churches. Up to this point in time, although it's always been in code what that limitation is, it really hadn't been enforced. This past year the city of Bismarck started to take a look at this and indicated that they were going to start enforcing this unless changes were made. They did back off but they urged the churches to contact their legislators and see if this can't be resolved. I introduce the bill to increase the allowable or the exempt acres to five. In coming up with that figure I visited with the assessing department in Bismarck and asked what a fair amount that this should be increased to and they indicated that increasing it to five acres. This would account for about 95% of the churches out there. I think the largest in Bismarck occupies some 18 ½ acres. The fact of the matter is when this was put into code many years ago, the two acres, that's when your churches were small little churches on the corner but today they are occupying a substantially larger portion of land. The original intent was always to exempt churches. I ask the committee for your support in looking at expanding this. I understand that there are a couple other bills dealing with the same topic which I think is because of the local assessors that forced this issue being brought up and addressed.

Chairman Wesley R. Belter: This committee on another bill has increased the acreage to 20 acres, are you comfortable with that?

Representative Dosch: That would cover 100% of the situations, at least in the Bismarck community that I am aware of so I would be comfortable with that. I know there was another one that was unlimited but there were some concerns by the city so I think 20 acres would work.

Rev. Dr. Randy Jaspers, Senior Pastor, Temple Baptist Church: Support. Please refer to attached testimony #1.

Jon Patch, Evangel Assembly of God in Bismarck: Support. Please refer to attached testimony #2.

Roger Will, Assembly of God in Bismarck: Support. Please refer to attached testimony #3. In the past few months we received a letter from the Acting City Assessor stating that we were going to be put on the tax rolls so we were quite shocked to learn about this. I visited with her and she stated she just wanted to follow the law which is very admirable and good but she wanted to do that although it left us in a bad position. She referred me to the lady at the State Tax Department, Marcy Dickerson, and she said this is clearly the law and this is what's happening. It's happening in Minot, Fargo, Grand Forks, and other cities around the state. I also learned that there were 10 or 11 churches in Bismarck that were going to be put on the tax rolls. We had a meeting with our County Auditor and the City Assessor and we had an opportunity to come and talk about what was happening. I asked the question who decides what this law means and how this is supposed to be enforced. It came out that if you have to go back you should go back to the Attorney General and see if there are any opinions on this law. The County Auditor took and looked up some Attorney General opinions and sent them to the City Assessor. She passed them on to the City Attorney and he looked through them and we got a letter back stating that we were not going to be put on the tax rolls, however, they encouraged us to come to the legislature and to get this law changed so there would not be this confusion. I feel comfortable that even if we don't change the law at all that the city of Bismarck will not be taxing us because of the constitution of North Dakota and because of the Attorney General's opinion. The Attorney General stated that he couldn't call the statute unconstitutional as that would take four out of five Supreme Court Justices to call it that but did say there was some conflict. That is where we are right now. I'm concerned about in the future when I'm gone and our City Assessor and City Attorney are gone and if they come back several years from now and look at this law they might not remember that it is in conflict with the constitution and the Attorney General opinion. I strongly encourage you to change this going from two to five or twenty are good steps but to probably do away with the limitation completely is the very best thing you could do and would be in agreement with the constitution.

Representative Steven L. Zaiser: Do you know of any other parishes that lease any of the property that the parish owns for any other purposes?

Roger Will: We do not lease any of our property out. We use the full 20 acres ourselves. I don't know of any other parishes that do that.

Christopher Dodsens, Executive Director of the North Dakota Catholic Conference: Support.

Especially in larger demographics we need larger facilities. More people move to the cities and change ministries, especially in the non-Catholic community which we call Para-ministries. There is a lot more activity that requires facilities to have more space. This is something that needs to be fixed. I can tell you that Fargo Diocese Directors tell me that most of their parishes they think would be over the 2 acre limit. Most of the rural communities or the smaller cities just turn a blind eye to the requirement and don't even try to figure it out but then you have the conflicts in the cities whether the two acres apply or the constitution applies and how it should be worked out. We need some consistency for good stewardship. The comment from Temple Baptist in Jamestown about good

stewardship reminded me that that is one of our obligations to think about how congregations will grow and how land would be successfully figured out. Churches do not like holding on to land that they don't use. I hear it from churches and I hear across the board that they hate that but they also have to think ahead to where the growth is. I talked to the land manager at St. Johns University in Minnesota and he told me when they were figuring out their management plan he looked for models with three criteria and the one that stands out to me was it had to be in existence for more than 500 years before we would consider a viable stewardship plan. We think sometimes in longer terms in churches.

Tom Freir, North Dakota Family Alliance: Support. I could tell you about a number of churches and parishes that are all in the same situation as Temple and that is trying to come up with the right number of acres to carry out the mission. The constitution does put into place the integrity of the intent. We are looking for a match up for that acreage. I think people we have canvassed said the 20 acre number looks like it would cover most everything. Evangel is right on the edge of that but right now I think we would be very comfortable with that.

Representative Mark S. Owens: We have two house bills, one at 20 acres, one at five acres, and a Senate bill 2189 that is at five acres for church land as far as regular services and two acres for Bishop housing and I find that a unique approach. Based on churches with schools and other activities which one is most appealing to you?

Tom Freir: I'm kind of a simple guy and I would lean toward the 20 acres. SB 2189 is a little bit complicated. I think there is a little bit of difficulty sometimes interpreting what those might mean especially to the city assessors. The 20 acres limit would cover most of the areas that might have some ancillary services.

Chairman Wesley R. Belter: No further testimony. No opposition. Closed hearing on HB 1370.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1370
February 14, 2011
#14526

Conference Committee

Committee Clerk Signature

Mary Brubaker

Explanation or reason for introduction of bill/resolution:

A bill relating to the property tax exemption for church property; and to provide an effective date.

Minutes:

No attachments.

Chairman Wesley R. Belter: We've already passed a bill, 1246, which is identical to this so I would entertain a motion for a do not pass.

Representative Patrick Hatlestad: Made a motion for **DO NOT PASS.**

Representative Steven L. Zaiser: **Seconded.**

**A roll call vote was taken: YES 12 NO 1 ABSENT 1
MOTION CARRIED---DO NOT PASS.**

Representative Wayne Trottier will carry HB 1370.

Date: 2-14-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1370

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande		✓	Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	AB				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Trottier

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

REPORT OF STANDING COMMITTEE

HB 1370: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1370 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1370

± |

Testimony Re: HB 1370, Church Property Tax Exemption

To: ND Representatives of the Finance and Taxation Committee

From: Rev. Dr. Randy Jaspers, senior pastor, Temple Baptist Church, 1545 4th Ave. NW (soon to be 1201 12th Ave. NE), Jamestown, ND 58401, 701.952.0822 (church), email: tbc@daktel.com

I support increasing the tax exemption for church property beyond the current 2 acres.

Reasons:

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.** We currently are in Phase 1 of a 3-phase master plan for the 14 acres we purchased (1998) in NE Jamestown. The primary reason we are relocating is that our current facility and property are not large enough to permit expansion. NOTE: We encourage school districts, park boards, library boards, hospitals, other municipal entities, etc. to plan for the future. For example, the Jamestown Middle and High Schools used to be confined primarily to one city block in downtown Jamestown. The school district relocated the high school to 74 acres adjacent to our property.
4. **Development promotes future development.** Large tracts of land are most available on the outskirts of cities. When developed, they encourage further area development.
5. **Congregations not choosing to develop property would still have to pay special assessments.** This tax liability can serve as a disincentive to purchasing more than is needed. We plan to move into our new facility this spring. In the time since we purchased the land, we have paid more in special assessments for the construction and upgrading of streets than we did for the original property.
6. **Church-owned property that is used for profit is already taxable.**
7. **A number of current ND country, town and city churches are on property in excess of the current 2-acre exemption.**

Thank you for allowing me to share my concerns. My preference is that the church property exemption be increased to more than the 5 acres proposed in HB 1370.

#2 p.1

February 14, 2011

The Honorable Wesley R. Belter - Chairman
House Finance and Taxation Committee

Re: Support for HB1370 – Property tax exemption for churches

Mr. Chairman and members of the committee, my name is **Jon Patch**, I'm a member of the **Evangel Assembly of God** congregation in **Bismarck** and currently serve on the board of deacons for our church and offer this testimony on behalf of our congregation. I'm here to testify in favor of the concept of HB 1370, however, I'd like to see it amended to allow a larger number of acres, or eliminate the acreage limitations altogether.

Let me give you some details about our church located here in Bismarck. We've been in existence since 1928 and have owned property in at least three locations, each time moving to a larger facility on a larger tract of land. Our current church campus is located on approximately **20 acres** in north Bismarck near the former home depot location (see attached map). We acquired this property before it was in the city limits in the late 1980s and early 1990s. I've included a photo of what the area looked like right after we built on the property in 1989. We currently have two major worship facilities (our main church building and the Element youth ministries building) located on each end of the property with an open area between them. We've used this open area for many functions over the years including children, youth and adult outdoor activities and services, overflow parking, parking lot snow storage, a bus barn, etc. There is also a private paved road connecting the parking lots of the two facilities.

Our current attendance on a Sunday is typically 1000 to 1200 people, although we have activities and functions taking place nearly every day. Our adherents number around 2000-2500. We employ 6 full-time pastors and have a large support staff.

We've never been assessed property taxes until just a few months ago when we received a letter from Bismarck's acting city assessor, Debra Goodsell, stating that the City would now be implementing the specifics of North Dakota Century Code which allows only a two-acre exemption from property taxes for churches. Ms. Goodsell stated that not assessing a property tax had been an oversight on their part. Our 2010 tax bill was set at about \$11,000. The City put an unrealistically low value on the property (\$1.25 per square foot) to keep the assessment down which we were thankful for. Neighboring property is valued at 10 times that amount. But, this left us wondering if a future city administrator may decide that we should be taxed at the true and full value of the property, leaving us with a potential \$100,000 annual tax bill.

The PREAMBLE of the ND Constitution states:

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

#2 p. 2

ARTICLE I - DECLARATION OF RIGHTS – Section 3, states:

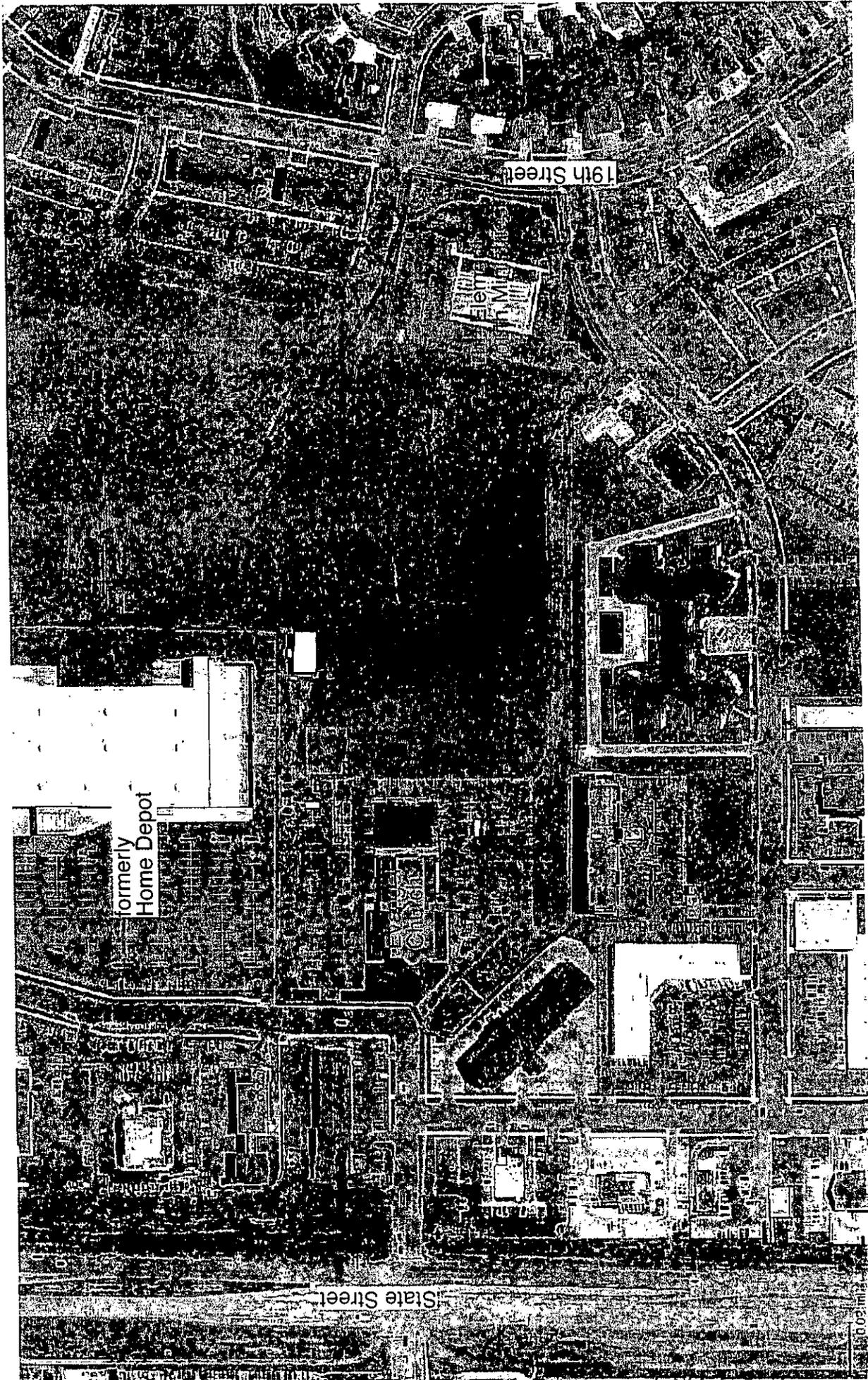
The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state...

And ARTICLE X - FINANCE AND PUBLIC DEBT - Section 5, states:

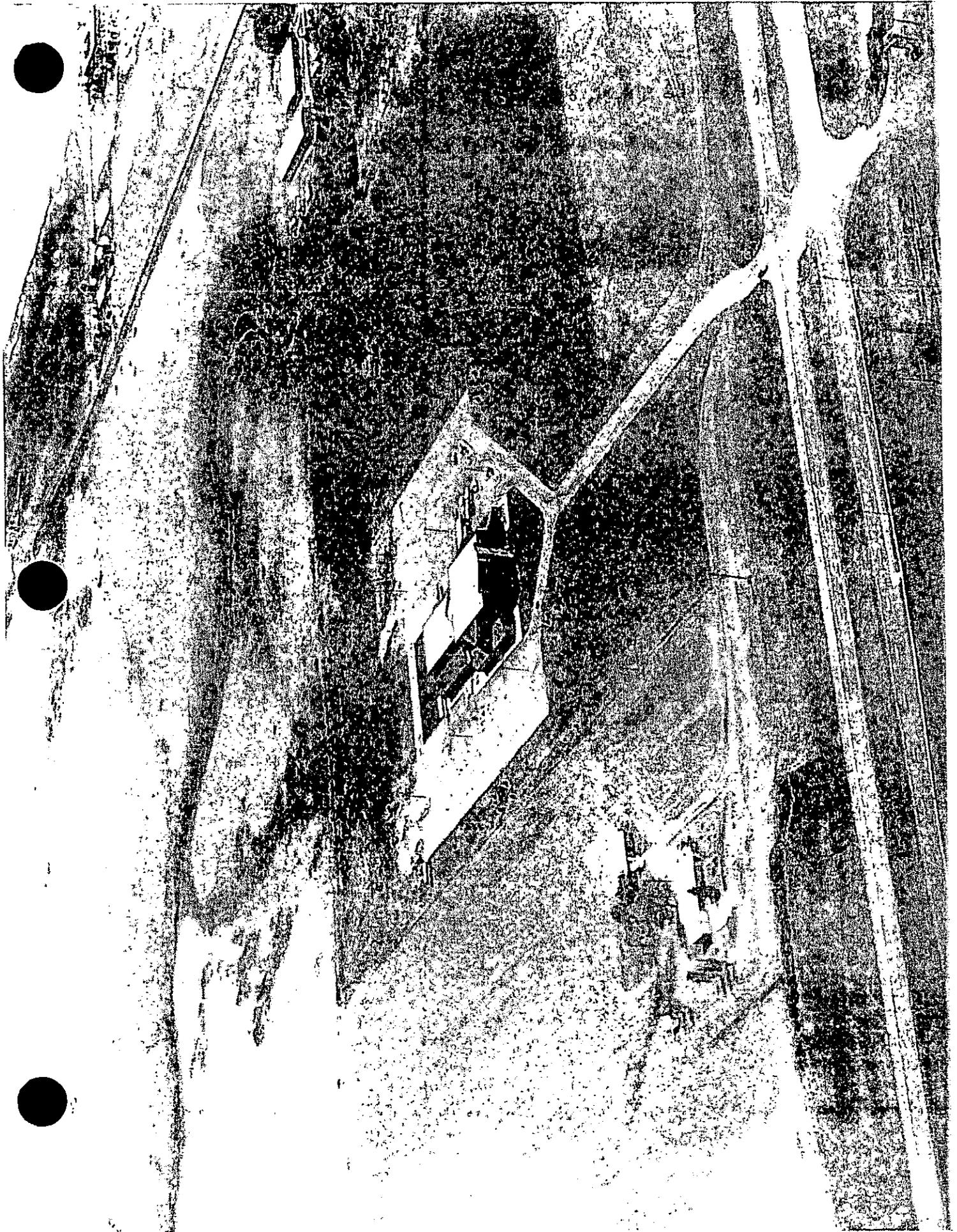
... and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.

We believe the intention of the Constitution and the current statute is to exempt churches from having to pay property tax. We also understand the legislatures desire to prevent abuse by groups claiming an unwarranted religious exemption. However, we think the existing two-acre limitation may be archaic. Although appropriate at the time it was enacted, we feel the two-acre limitation is too restrictive in today's society. Large churches, such as ours and many others throughout the state today, were not common or possibly even nonexistent at the time the two-acre limitation was put in place. We are totally supported by charitable donations from our members and attenders. We do not hold the property with a view toward profit and do not intend to sell it into the private sector. We do plan to continue expanding our campus and using the grounds for our church related activities.

I would request that the committee move forward with their efforts to allow all valid claims for exemption from property taxation for religious purposes and not exclude those larger congregations who require larger tracts of land to carry out their religious purposes. In our case, this would be a minimum of 20 acres.



#2 p.4



#3 p. 1

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-F-05

Date issued: June 21, 1995

Requested by: Charlie Whitman, Bismarck City Attorney

- QUESTION PRESENTED -

Whether the tax exemptions in N.D.C.C. § 57-02-08(7) and (9) for property used for "public worship" or "religious services" unconstitutionally restrict the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious "purposes."

- ATTORNEY GENERAL'S OPINION -

It is my opinion 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 in N.D.C.C. § 57-02-08(7) and (9) because Article X, Section 5 is self-executing except for the savings provision in the last sentence, which does not apply to that exemption.

- ANALYSIS -

In enacting a statute, it is presumed that the Legislature intended to comply with the North Dakota and United States constitutions, and any doubt must be resolved in favor of the statute's validity. N.D.C.C. § 1-02-38(1); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 357 (N.D. 1945). This presumption is conclusive unless the statute clearly contravenes the state or federal constitution. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987). Furthermore, a statute may be declared unconstitutional only upon the concurrence of four out of five justices of the North Dakota Supreme Court. N.D. Const. art VI, § 4. The opinion of an Attorney General is not binding on the judiciary. Therefore, it has been this office's policy to refrain from calling into question the constitutionality of a statute unless it is clearly and patently unconstitutional.

"All property in this state is subject to taxation unless expressly exempted by law." N.D.C.C. § 57-02-03. Taxpayers

#3p.2

ATTORNEY GENERAL'S OPINION 95-05
June 21, 1995
Page 2

have the burden of proving that their property is exempt from tax. Y.M.C.A. of N.D.S.U. v. Bd. of County Comm'rs, Cass County, 198 N.W.2d 241, 244 (N.D. 1972). Tax exemptions are strictly construed against taxpayers, but courts should liberally construe the term "religious" to fulfill the intent of constitutional and statutory provisions. Lutheran Campus Council v. Bd. of County Comm'rs, Ward County, 174 N.W.2d 362, 365-66 (N.D. 1970).

Your letter specifically concerns property used exclusively for administrative support of religious organizations rather than religious worship services or as a residence for clergy. Article X, Section 5 of the North Dakota Constitution (formerly Article X, Section 176) currently provides in part:

[P]roperty used exclusively for schools, religious, cemetery, charitable, or other public purposes shall be exempt from taxation. . . . Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

(Emphasis added). Similar constitutional exemptions have been interpreted to include property used as the administrative offices of a religious organization, because these offices are property "incidental to and reasonably necessary for the accomplishment" of the organization's religious purposes. Bd. of Trustees of the Kansas E. Conference of the United Methodist Church v. Cogswell, 473 P.2d 1, 11 (Kan. 1970) (quotation omitted); Christian Reformed Church in North America v. City of Grand Rapids, 303 N.W.2d 913, 919 (Mich. Ct. App. 1981). See also 1981 N.D. Op. Att'y Gen. 81-13 at 34 (property must be reasonably necessary for religious purposes). Guided by these interpretations of similar constitutional exemptions, it is my opinion that the administrative offices of a religious organization are property used for religious purposes under Article X, Section 5 of the North Dakota Constitution. Whether the property you describe is so used, and whether that use is exclusive, are questions of fact that the City must determine.

Apparently anticipating this interpretation of Article X, Section 5, you ask whether it conflicts with N.D.C.C. § 57-02-08(7) and (9), which exempt from tax:

All houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected, and any dwellings belonging to religious

#3 p.3

ATTORNEY GENERAL'S OPINION 95-05
June 21, 1995
Page 3

organizations intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church, together with the lots upon which the same are situated.

.....

All real property . . . owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling . . . used for the residence of the bishop, priest, rector, or other minister in charge of services, must be deemed to be property used exclusively for religious services, and exempt from taxation

All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.

According to your letter, the administrative offices in this case are not used for public worship services or as a residence for clergy, so the exemption in subsection 7 does not apply. See Christian Church of Ohio v. Limbach, 560 N.E.2d 199, 200 (Ohio 1990) (administrative offices do not facilitate public worship services). Thus, the question remaining under N.D.C.C. § 57-02-08 is whether these offices are "a building used for the religious services of the organization" under subsection 9.

The phrase "religious services" is not defined in N.D.C.C. § 57-02-08. Words and phrases not defined in a statute are to be given their plain and ordinary meaning. N.D.C.C. § 1-02-02. There are several meanings of "service," but when combined with the term "religious," the term could mean either "[a]cts of devotion to God," or "[a] religious rite" or ceremony. The American Heritage Dictionary 1121 (2d. coll. ed. 1991). This phrase must also be "construed according to the context" of the statute. N.D.C.C. § 1-02-03. As used in subsection 9, the phrase "religious services" refers not to a private act of devotion, but to a religious event presided over by a member of the clergy or other minister and attended by people who may use a parking lot.

Statutes should be construed to give meaning to every part,

#3P.4

ATTORNEY GENERAL'S OPINION 95-05
June 21, 1995
Page 4

and as this office has noted, there is "a great similarity between" subsections 7 and 9. 1970 Op. Att'y Gen. 394, 398. Nevertheless, when viewed in context, the meaning of "religious services" is reasonably clear. Thus, it is my opinion that the phrase "religious services" is limited to religious "rites" or worship services. This interpretation is consistent with North Dakota Conference Association of Seventh-Day Adventists v. Bd. of County Comm'rs, Stutsman County, 234 N.W.2d 912, 916 (N.D. 1975), in which exempt property was used as residences for ordained ministers who presided over religious worship services in area congregations.

Although subsection 9 does not directly exempt from tax all property used for religious purposes, the final sentence in that subsection could be interpreted as doing so indirectly by making any such taxes void. Until 1989, that sentence voided all taxes on "any such property, while the same was so used for religious purposes." See 1989 N.D. Sess. Laws ch. 690, § 1 (emphasis added). This sentence incorporated by reference the property and uses previously discussed in the subsection. The underlined terms were deleted in 1989, but "such" was replaced with "of the," so the sentence continues to apply only to the property and uses described in the subsection.

As your letter and the above analysis illustrate, property can be exempt from tax under Article X, Section 5 of the North Dakota Constitution but not exempt from tax under N.D.C.C. § 57-02-08(7) and (9). Property can also be exempt under these subsections but not Article X, Section 5. See 1981 N.D. Op. Att'y Gen. 81-81. A constitutional provision normally prevails in a conflict with a statute. Article X, Section 5, quoted above, is self-executing except for the savings provision in the last sentence. Lutheran Campus Council, 174 N.W.2d at 367 (Teigen, C.J., concurring specially); 1970 Op. Att'y Gen. at 395. Thus, unless this savings clause applies, property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature. This office has previously reached similar conclusions. See 1994 N.D. Op. Att'y Gen. 94-07 (property used for charitable or public purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08); 1981 N.D. Op. Att'y Gen. 81-13 (excess of two acres used exclusively for religious purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08(9)).

Before the current constitutional exemption for property used exclusively for religious purposes was adopted in 1918, former

#3 p.5

Article XI, Section 176 of the North Dakota Constitution provided that "the legislative assembly shall by a general law exempt from taxation property used exclusively for . . . religious . . . purposes." See 1913 N.D. Sess. Laws ch. 130 (emphasis added). The predecessor to N.D.C.C. § 57-02-08(7) in effect in 1918 exempted from tax "all houses used exclusively for public worship and the lots and parts of lots upon which such houses are erected." Compiled Laws of North Dakota of 1913, § 2078; 1907 N.D. Sess. Laws ch. 218, § 1. The predecessor to N.D.C.C. § 57-02-08(9) in effect at the same time provided:

Property used exclusively for religious purposes is exempt from taxation as hereinafter provided. All real property, not exceeding one acre in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling and usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consist of one tract or more. . . .

Compiled Laws of North Dakota of 1913, § 2079 (emphasis added); 1901 N.D. Sess. Laws ch. 160. Thus, as with current law, these statutes in 1918 did not exempt all property used exclusively for religious purposes, but only property used for public worship or religious services that furthered those purposes. Indeed, by incorporating the phrase "religious purposes" at the beginning of the subsection, and then restricting the exemption to property used only for "religious services," the Legislature appears to have purposely restricted the exemption required by the constitution.

Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature. Engstad v. Grand Forks County, 84 N.W. 577, 578 (N.D. 1900). In Engstad, the Legislature had enacted a tax exemption only for property belonging to charitable institutions, but Article XI, Section 176 required the Legislature to exempt from tax all property used for charitable purposes, whether owned by institutions or private persons. The Supreme Court concluded that although the statutory exemption was narrower than mandated by the constitution, it was nevertheless valid. Engstad, 84 N.W. at

#3 p. 6

ATTORNEY GENERAL'S OPINION 95-05
June 21, 1995
Page 6

579. This decision was limited to property used for charitable purposes. However, the same rationale would have applied to property used for religious purposes. Therefore, although the statutory exemptions were narrower than mandated by the constitution, it appears that property used for religious purposes but not public worship or religious services was not exempt from tax when the current constitutional exemption was adopted in 1918. As a result, if the savings clause applied to the 1918 amendment, such property would remain nonexempt today unless otherwise provided by law.

This savings clause "freezes the exemptions and property subject to tax as they existed upon the adoption of the amended version of [former] § 176 until the Legislature provides for other methods of taxation of exemptions." 1970 N.D. Op. Att'y Gen. at 395. This provision was first added to the constitution in 1914 and retained when the current exemption was added to former Article XI, Section 176 in 1918 by initiated measure. See 1919 N.D. Sess. Laws ch. 90; 1913 N.D. Sess. Laws ch. 103. Although this savings provision was retained by the 1918 amendment, its text refers to the changes caused by "this amendment," which would continue to be the 1914 amendment. It is, therefore my opinion that the savings clause in Article X, Section 5 of the North Dakota Constitution does not apply to the amendments adopted in 1918, which would include the current exemption for property used exclusively for religious purposes.

This conclusion is supported by the changes made to this section by the 1918 amendment. With overstrikes through the deleted text and the new text underlined, former Article XI, Section 176 as amended in 1918 provided:

Taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only, but the legislature 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, and of the state, county and municipal corporations, shall be exempt from taxation, and the legislative assembly shall by a general law exempt from taxation property used exclusively for schools,

#3p.7

ATTORNEY GENERAL'S OPINION 95-05
June 21, 1995
Page 7

~~religious, cemetery, charitable or other public purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; provided, shall be exempt from taxation. Except as restricted by this article, the legislature 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, in the same manner and to the same extent, until otherwise provided by statute.~~

Compare 1919 N.D. Sess. Laws ch. 90 with 1913 N.D. Sess. Laws ch. 103.

Because this amendment was adopted as an initiated measure, there is no legislative history that can be used to determine its purpose. However, as seen from the language deleted and added by the amendment, it made three substantive changes. First, it authorized the Legislature to exempt personal property from taxation. Second, it affirmed the general authority of the Legislature to raise revenue and fix the location of property. Finally, and most important for the question you ask, this amendment made the exemptions in that section self-executing rather than a mandate to the Legislature, effectively overruling the Supreme Court's decision in Engstad which had been affirmed just two years earlier in State ex rel Linde v. Packard, 160 N.W. 150, 156 (N.D. 1916).

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. It would defeat this purpose to conclude that the amendment's deliberate removal of the Legislature's discretion was ineffective under the savings provision unless the Legislature "otherwise provided by statute." The only way to give effect to this change is to follow the plain meaning of the savings provision and conclude that it only applies to the 1914 amendment.

In summary, Article X, Section 5 of the North Dakota Constitution is self-executing except for the savings provision in the last sentence, which does not apply to the exemption in that section for property used exclusively for religious purposes. 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

#3 p.8

ATTORNEY GENERAL'S OPINION 95-05
June 21, 1995
Page 8

that exemption.

- EFFECT -

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.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: James C. Fleming
Assistant Attorney General

vkk

#3p.9

Date Issued: February 12, 1981 (AGO 81-13)

Requested by: Charles D. Orvik, Pierce County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether land purchased by a church on which no church structure exists and on which no religious services have been held is eligible for a real estate tax exemption for any part of the year of purchase or any year subsequent thereto in which the conditions remain the same.

II.

Whether a church structure and related improvements constructed on two or less acres of ground entitle the larger remainder of the eight-acre tract owned by the church to be eligible for a real estate tax exemption.

III.

Whether the use by a church of more than two acres of land for religious purposes qualifies the land greater than two acres so used to be entitled for a real estate tax exemption.

IV.

Whether section 57-02-14.1 of the North Dakota Century Code applies to a church property not located within the limits of a city.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that land owned by a church on which no church structure exists, and on which no religious services have been held, does not qualify for a real estate tax exemption during the year of purchase or any subsequent year thereafter when the conditions remain the same.

II.

It is my further opinion that if a church does not use more than two acres of a larger eight-acre tract for religious purposes, then only so much of the larger tract as is used for religious purposes up to two acres shall be eligible for a real estate tax exemption.

III.

#3 p.10

It is my further opinion that 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.

IV.

It is my further opinion that the requirements of section 57-02-14.1, N.D.C.C., do not apply to real property owned by a church not within the limits of a city.

- ANALYSIS -

I.

Section 5 of Article X (formerly Section 176) of the Constitution of the state of North Dakota provides that "property used exclusively for . . . religious . . . purposes shall be exempt from taxation." Section 57-02-08, N.D.C.C., supports the Constitution by creating the statutory exceptions contemplated by the Constitution in subsections 7 and 9 thereof. Subsection 7 exempts "all houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected. . . ." Subsection 9 exempts "all real property, not exceeding two acres in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization. . . ."

If a tract of land or a portion of it that has no building on it were used exclusively for outdoor religious services, the portion reasonably necessary for those services would be exempt under Section 5 of Article X of the North Dakota Constitution. So long as no religious buildings were constructed on the real property any claim for an exemption from real estate taxes would have to be based on a showing under Section 5 of Article X of the North Dakota Constitution that that part of the tract on which a real estate tax exemption was claimed was used exclusively for religious purposes. That determination is made with reference to the facts on the assessment date of February first of each year established in section 57-02-11(1), N.D.C.C. See *Gaar, Scott & Co. v. Sorum*, 90 N.W. 799 (N.D. 1902), and *United Telephone Mutual Aid Corp. v. State*, 87 N.W.2d. 54 (N.D. 1957).

II.

Subsection 9 of section 57-02-08, N.D.C.C., limits the exemption for land to two acres.

III.

If more than two acres of land are used exclusively for religious purposes, the acreage 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.

#3 p.11

IV.

Section 57-02-14.1, N.D.C.C., requires the owner of real property within a municipality who claims it is exempt from taxation to annually file with the assessor and county auditor a certificate in which is set out all the facts on which the claim of exemption is based. This statute was enacted in 1967. Section 57-02-14.1, N.D.C.C., applies to real property within a "municipality." It soon became necessary to determine whether "municipality" meant "municipality" as defined in section 40-01-01(1) to mean only a city or whether it meant "municipality" as defined in section 57-02-01(6), N.D.C.C., to mean any political subdivision empowered to levy taxes. Apparently when the 1967 legislative committees considered the bill before it became law, both the committee members and those supporting the bill understood that the annual certificate requirement was intended to apply only to real property within a city; because of that, the tax officials have interpreted it as applying only to real property within a city. That interpretation is a reasonable interpretation and should be continued. Accordingly, real property owned by a church not located within the city limits is not subject to the filing requirements of section 57-02-14.1, N.D.C.C.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

ROBERT O. WEFALD
Attorney General

Prepared By: Kenneth M. Jakes
Assistant Attorney General