

**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.”<sup>1</sup>

Even though it has been determined on a number of occasions that this constitutional provision is self-executing,<sup>2</sup> 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.

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<sup>1</sup> N.D. Const. art. X, § 5.

<sup>2</sup> 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.

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.<sup>3</sup>

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.<sup>4</sup>

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<sup>3</sup> N.D.C.C. § 57-02-08.

<sup>4</sup> 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.

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.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> The language of N.D.C.C. 57-02-08(9) addresses outbuildings, additional

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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).

<sup>5</sup> 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,

<sup>6</sup> 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.

<sup>7</sup> 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).

dwellings, and expenses of property owned by any religious corporation or organization, and merely states the minimum exception under the constitution, not the maximum.<sup>8</sup> 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.<sup>9</sup>

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

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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.<sup>10</sup>

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“[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).

<sup>8</sup> N.D.C.C. 57-02-08(9).

<sup>9</sup> N.D.A.G. 2007-L-17.

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