

**OPINION
70-387**

March 18, 1970 (OPINION)

Mr. William D. Yuill

Assistant State's Attorney

County of Cass

RE: Taxation - Disabled Veterans Exemption - Application

This is in response to your letter in which you ask for an opinion on the following questions:

1. Is the exemption limited only to the property located upon lots in any city or village?
2. Would alternative personal property up to an assessed valuation of \$4,000. used and owned as a homestead as defined in section 47-18-01 include mobile homes?
3. Would household goods, livestock or farm machinery located in a rural area qualify for the exemption as alternative personal property or must this personal property qualify under the provisions of being used and owned as a homestead?
4. Would income received in the form of Social Security benefits be included in the total of earned income or would it be excluded along with the exclusion of the regular veteran's pension which the veteran receives for service connected disability?

The answers to the above questions are basically found in the provisions of subsection 20 of section 57-02-08 of the 1969 Supplement to the North Dakota Century Code, which provides as follows:

0. Fixtures, buildings and improvements upon lots in any city or village up to a net assessed valuation of ten thousand dollars for paraplegic disabled veterans, and four thousand dollars or in the alternative personal property up to an assessed valuation of four thousand dollars, used and owned as a homestead, as defined in section 47-18-01, by any other disabled veteran who was discharged under honorable conditions or who has been retired from the armed forces of the United States with a service connected disability greater than fifty percent, or his unremarried widow if such veteran is deceased, provided, however, that such veteran and his wife, or if such veteran is deceased and his unremarried widow, do not earn more than three thousand dollars net income exclusive of any pension for service connected disability from the United States government during the calendar year for which such exemption is claimed, and who shall have a certificate from the United

States veterans administration, or its successors, certifying the amount of his disability. To obtain such exemption, an affidavit accompanied by such certificate, showing the facts herein required and a description of the property, shall be filed with the county auditor. Such affidavit and accompanying certificate shall be opened to public inspection. The board of county commissioners is hereby authorized to cancel the unpaid taxes for any year in which such veteran shall have held title to such exempt property;"

The above quoted subsection, during the course of years, has been amended numerous times. It appears obvious that certain provisions were deleted and certain provisions were added without too much concern for sentence structure or rules of grammar.

We are also mindful that, for the most part, North Dakota has two major classifications of real property, namely, (agricultural) rural and urban. The improvements on agricultural property have been historically exempt. (See subsection 15 of section 57-02-08). It is conceivable that the Legislature thought it unnecessary to exempt improvements located on agricultural land as such property which, in most instances, would be exempt without any further legislation. The real problem which existed at the time was to exempt property located in a city or village.

Thus, in response to your first question, it is our opinion that the property to be exempt under subsection 20 of section 57-02-08 must be located in a city or village. In arriving at this conclusion we are mindful that improvements under subsection 15 of section 57-02-08 located on agricultural lands are exempt.

The term "Used and owned as a homestead" initially modified the terms "fixtures, buildings and improvements. By subsequent amendments the Legislature added additional language in the first sentence by inserting phrases such as "paraplegic disabled veterans, and four thousand dollars or in the alternative personal property up to an assessed valuation of four thousand dollars." This language obviously was inadvertently inserted before the following language: "used and owned as a homestead, as defined in section 47-18-01." From the history of this subsection, it appears that the Legislature intended to give a homestead exemption up to the net assessed value of ten thousand dollars to paraplegic disabled veterans and a homestead exemption up to the net assessed value of four thousand dollars to the disabled veterans who were honorably discharged, etc. It is further provided that, in the alternative, a person could select personal property in the assessed valuation of four thousand dollars. The Legislature basically intended to give paraplegic disabled veterans an exemption not to exceed ten thousand dollars and to other disabled veterans an exemption not to exceed four thousand dollars. It also appears clear that if the qualified veteran does not have a homestead, he could claim personal property of an equivalent amount.

In response to your second question, it is our opinion that a qualified disabled veteran may claim personal property as an exemption if he does not have or claim a homestead as an exemption

and the amount of such property claimed as an exemption may not exceed an excess of four thousand dollars of the assessed valuation. It is our further opinion that the property which may qualify for this exemption would include a mobile home.

In response to your third question, it is our opinion that household goods, livestock or farm machinery, regardless where located in the state of North Dakota, may qualify for the alternative exemption as personal property if the disabled veteran does not claim a homestead as an exemption. As we have earlier indicated, the Legislature intended to give disabled veterans an exemption, either as a homestead or as personal property, and then set the value of the property which may be exempt.

As to the fourth question, the following language is controlling: "
* * do not earn more than three thousand dollars net income exclusive of any pension for service connected disability from the United States government during the calendar year for which such exemption is claimed, and who shall have a certificate from the United States veterans administration, or its successors, certifying the amount of his disability. * * *." (Underscoring ours.)

The underscored language clearly indicates that the pension must be for a service connected disability. The Social Security Act does, amongst other things, provide for disability benefits. If the disability upon which benefits are paid are service connected, it would appear that the benefits so received would come within the general classification of service connected disability. In making this observation, we recognize that there are numerous veterans' programs which take into account service connected disability. We would also assume that the various veterans' programs and other programs, including the Social Security Act, do not provide for duplication of benefits. However, if a disabled veteran, because of his disability, is entitled to and receives Social Security payments for a service connected disability, such payments would come within the exclusion.

Thus, in direct response to your fourth question, it is our opinion that any payments received by a qualified disabled veteran for a service connected disability under the Social Security Act would not be included in determining his net income for purposes of exemption. If the social security benefits are for a non service connected disability, such benefits would be included in determining net income.

HELGI JOHANNESON

Attorney General