

June 2, 1970 (OPINION)

Honorable Carl Boustead

State Representative, Thirty-second District

RE: Taxation - Sales Tax - Exemption for Zoo

This is in reply to your recent letter relative to the above-captioned matter. You state the following facts and questions:

The Dakota Zoological Society, Inc., is a nonprofit corporation which in conjunction with the Bismarck, North Dakota Park District and Board operates the Dakota Zoo, located in Bismarck, North Dakota. It is my understanding that the city of Bismarck through its Park Board owns the real estate of the Dakota Zoo location and provides certain services in connection with its operation. It is my further understanding that the Dakota Zoological Society, Inc., is a nonprofit corporation which supports and supervises the operational aspects of the zoo. In any event, the operation is entirely nonprofit and all proceeds of admissions, memberships, and other means of income are all returned to the operation and expansion of the zoo. I have been further advised by the Board of Directors of Dakota Zoological Society, Inc., that they have qualified under federal law as a charitable organization in connection with federal tax law, particularly as it relates to charitable contributions.

The questions I have put to you deal with the liability of Dakota Zoological Society, Inc., to the state of North Dakota for certain sales taxes in connection with memberships in the Society and admission to the zoo. Specifically, is Dakota Zoological Society, Inc., required to pay to the state of North Dakota sales tax on its admissions to the zoo and zoo grounds and memberships in the Zoological Society which carry with such memberships an entitlement to free admission to the zoo. In connection with the membership question, the Zoological Society is prepared to submit affidavits and other required evidence showing that a significant number of memberships in the Zoological Society never exercise their entitlement of free admission to the zoo.

As you know, the questions I have asked you to determine concern chapter 57-39.2 of the North Dakota Century Code, particularly sections 57-39.2-01, 57-39.2-02, and 57-39.2-04. The board of directors of the Dakota Zoological Society contend that they are exempt from sales tax on admissions and memberships under subparagraph 4 of 57-39.2-04 as a charitable or educational organization or both."

We will first consider the matter of the exemption under section 57-39.2-04(4) of the North Dakota Century Code, as amended, since, if the corporation is exempt under this provision the question of whether the membership is a charge for admission would appear to be

answered. Section 57-39.2-04(4) of the North Dakota Century Code, as amended, provides as follows:

EXEMPTIONS. There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

* * *

4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, where the entire amount of such receipts is expended for educational, religious, or charitable purposes.

* * *"

In the first instance we would note the fact a society or corporation is a nonprofit corporation, is not, of itself, a basis for exemption under the sales tax act. There are many nonprofit corporations who must pay sales tax. Thus, unless there is a specific exemption contained in the sales tax act, the state, a political subdivision or a nonprofit corporation must pay the sales tax. The question, therefore, appears to be whether the Dakota Zoological Society, Inc., in conducting a zoo to which people may be admitted upon membership in the society or upon payment of an admittance fee, is conducting an educational or charitable activity within the meaning of the above quoted statute.

To our knowledge there are no cases from this state directly in point on this question. However, we note that art galleries, museums and public libraries have been held to be "educational institutions" and exempt from taxation. See 51 Am. Jur. 596, TAXATION, subsection 620. We see no reason for distinguishing a zoo from this classification in those instances in which the zoo is not operated for profit. We note the provision with regard to the exemption from sales tax refers to educational activities. We believe the operation of the zoo can be said to be an educational activity in the same manner as the operation of an art gallery, a museum, or a public library.

Section 57-39.2-04(4) does add another condition to the exemption, i.e., the entire amount of the receipts from the activity must be expended for educational purposes. According to the statement of facts contained in your letter, all proceeds of admissions, memberships and other means of income are returned to the operation and expansion of the zoo. This condition is apparently satisfied although this is a question of fact and not a question of law.

If, however, concessions are operated at the zoo and any part of the proceeds of the concessions are used to replenish supplies used in the concessions, etc., the entire proceeds of the concessions, would be subject to the sales tax and would not be exempt. We cannot determine from the letter presented the status of this specific part of the operation of the zoo.

Assuming the facts as presented are correct, it is our opinion that

the Dakota Zoological Society, Inc., in the operation of the Dakota Zoo, is conducting an educational activity and the gross receipts from such educational activity would be exempt from sales tax under the provisions of subsection 57-39.2-04(4) of the North Dakota Century Code, as amended.

HELGI JOHANNESON

Attorney General