

**OPINION
71-389**

February 12, 1971 (OPINION)

Mr. Byron L. Dorgan
Tax Commissioner

RE: Taxation - Exemption - Farm Buildings

This is in answer to your request for my opinion as to whether Senate Bill 2045 as amended (Senate Journal page 371) and passed by the Senate (Senate Journal page 486) would have the effect, if enacted into law, of repealing the present property tax exemption for farm improvements.

Senate Bill 2045 as reprinted incorporates the amendments adopted by the Senate as set out in the Senate Journal page 371.

In my opinion, this bill as amended and passed by the Senate does not repeal the tax exemption for farm buildings and farm improvements as provided for in subsection 15 of Section 57-02-08 of the North Dakota Century Code. Section 1 of the bill amends Section 57-02-04 of the Code, which section defines real property for the purpose of taxation. Section 2 of the bill creates and enacts a new Code section, Section 57-02-05.1, which defines personal property for the purpose of taxation to include all property that is not included within the definition of real property. As explained below, these two sections only divide property into two classes, real property and personal property, and do not by themselves provide that any particular property, either real or personal, is subject to property taxes or exempt from property taxes.

Another section of the Code, Section 57-02-03, which is not amended by this bill provides as follows:

"57-02-03. PROPERTY SUBJECT TO TAXATION. Except as otherwise expressly provided, the following property is subject to taxation:

1. All real and personal property in this state;
2. The personal property of persons or of corporations residing or doing business therein;
3. The property of corporations now existing or hereafter created; and
4. The property of all banks now existing or hereafter created.

Such property, or the value thereof, shall be entered in the list of taxable property for that purpose in the manner prescribed in this chapter."

You will note that this section begins by providing that "Except as otherwise expressly provided, the following property is subject to

taxation:* * *" One of the exceptions that is "otherwise expressly provided" is the present exemption for farm buildings and farm improvements that is provided for in subsection 15 of Section 57-02-08; this subsection is not repealed either expressly or, in my opinion, impliedly by Senate Bill 2045.

In this connection it is noted that Section 57-02-04 in defining real property begins with the words "Real Property, for the purpose of taxation, includes* * *" These words are not changed by the amendment to that section that is made by Section 1 of the bill and they do not provide that any particular kind of real property is either subject to or exempt from property taxes. Section 57-02-03 quoted above and such exemption provisions as those included in Section 57-02-08 do provide which property is taxable and which is exempt. The words "for the purpose of taxation" that are used in defining personal property in Section 57-02-05.1 as created by Section 2 of this bill should be construed in the same way as the similar words used in Section 57-02-04 for defining real property, that is, only as a classification of property that distinguishes personal property from real property for the purpose of applying the other provisions of the property tax laws; in this respect Section 57-02-05.1 merely replaces the present definition of personal property that is included in Section 57-02-05 which would be repealed by Section 4 of this bill.

Section 3 of this bill amends subsection 25 of Section 56-02-08 of the Code. This subsection is the personal property tax repeal provision that was enacted by the 1969 Legislature. The amendments to this subsection that are made by Section 3 of the bill do not, in my opinion, repeal or in any way change the present exemption for farm buildings and farm improvements that is provided for in subsection 15 of this same Section 57-02-08.

It is recognized and we are aware that some legislators have expressed concern that the bill in its present form could raise the question whether or not farm buildings and improvements would continue to be tax-exempt. We would deem it advisable to eliminate such concern and to clearly provide that the tax exemption for farm buildings and improvements are not to be disturbed by the present bill by amending the bill as follows: On page 1 of the reprinted bill, line 18 after the comma, at the end of the line by inserting the words "except as otherwise provided." This amendment would clearly erase any doubt that the exemption for farm buildings and improvements is not to be disturbed.

It is our opinion that if Senate Bill 2045 as passed by the Senate would be amended as suggested and if enacted into law, would not repeal in any the present property tax exemption for farm buildings and farm improvements. We would also be of the opinion that the exemption would not be removed as a result of the bill in its present form, but the amendment as suggested would eliminate any doubt.

For these reasons it is my opinion that Senate Bill 2045 as passed by the Senate would not, if enacted into law, repeal in any way the present property tax exemption for farm buildings and farm improvements that is provided for in subsection 15 of Section 57-02-08.

HELGI JOHANNESON

Attorney General