

LETTER OPINION
97-L-149

September 9, 1997

Mr. Lonnie W. Olson
Ramsey County State's Attorney
524 4th Ave #16
Devils Lake, ND 58301

Dear Mr. Olson:

Thank you for your letter inquiring whether the moving of a house, building, mobile home, structure or other improvement to prevent its destruction due to the flooding of Devils Lake constitutes destruction or injury by flood under N.D.C.C. § 57-23-04(1)(g).

You make this inquiry in conjunction with the following facts which are set forth in your letter:

There are a large number of homes built around the shores of Devils Lake. As the lake has been rising, a number of the homes have been moved. Most of the homes were covered by the National Flood Insurance Program which, through Congress, was allowed a "waiver" wherein when the lake reached a certain elevation, a waiver was granted for each particular house allowing the home to be moved rather than destroyed by the water. The flood insurance program would pay the owner, at which time the owner could purchase the home back for salvage value, and hire a home mover to move the house, or sell the home for salvage value and allow someone else to move it. The home owners who did not have flood insurance had to privately hire house movers to come onto the property and move the house before the damage was irreparable.

The homeowners which had their homes moved off in 1996 have now asked for an abatement pursuant to N.D.C.C., Section 57-23-04(1)(g).

N.D.C.C. § 57-23-04(1)(g) provides:

1. Upon application filed in the office of the county auditor on or before November first of the year following the year in which the tax becomes delinquent, as in this chapter provided, the board of county commissioners may abate or refund, in whole or in part, any assessment or tax upon real property, in the following cases:

.

Mr. Lonnie W. Olson
September 9, 1997
Page 2

- g. When any building, mobile home, structure, or other improvement has been destroyed or injured by fire, flood, or tornado the abatement or refund must be granted only for that part of the year remaining after the property was damaged or destroyed.

The language in N.D.C.C. § 57-23-04(1)(g) parallels language in N.D.C.C. § 57-02-11(2) which authorizes a deduction from the valuation of the property if the owner notifies the assessor before April 1 in any year that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or injured by fire, flood, or tornado.

A 1989 opinion of this office dealt with voluntarily removing improvements during the assessment year but after the date fixed for assessment. See Letter from Attorney General Nicholas J. Spaeth to Michel W. Stefonowicz (May 17, 1989), copy attached. That opinion held no statute authorizes abatement of property taxes on a pro rata basis when a building in existence on the assessment date is later voluntarily removed during the assessment year. In the circumstances related in your letter, the moving of the homes was not voluntary but was necessitated to avoid substantial loss from the rising elevation of Devils Lake.

It is my opinion that removing a building, mobile home, or structure to avoid advancing flood waters' injury or destruction under the circumstances described in your letter does qualify for abatement or refund of taxes under N.D.C.C. § 57-23-04(1)(g). In determining whether moving the building was necessary or voluntary, consideration may be given to the elevation of the lowest floor at or below the forecasted crest of the lake level by the National Weather Service at the time the house was moved. If the move was to comply with an order from the State Engineer pursuant to N.D.C.C. § 61-03-21.3 to remove buildings to avoid a danger to the public health or safety or a menace to life or property, there can be no question that the move was involuntary.

The amount of damage is a question of fact to be determined at the time the abatement is requested. Further, a landowner is entitled to an abatement or refund of taxes to reflect any damage or injury to any improvements remaining on the property after the home or other buildings are removed such as the foundation to the buildings, septic systems, etc.

Sincerely,

Mr. Lonnie W. Olson
September 9, 1997
Page 3

Heidi Heitkamp
ATTORNEY GENERAL

bab/pg
Enclosure