

2013 HOUSE FINANCE AND TAXATION

HB 1300

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee

Fort Totten Room, State Capitol

HB 1300
January 28, 2013
Job #17828

☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A Bill relating to the property tax exemption for property of churches.

Minutes:

Attached testimony #1, 2, 3, 4, 5, 6, 7, 8, 9

Chairman Belter: Opened hearing on HB 1300.

Representative Koppelman: Introduced bill. See attached testimony #1. Distributed a letter from John Walstad (testimony #2). Distributed a letter from Representative Koppelman to the City of West Fargo (testimony #3). Distributed letters from church pastors (testimony #4, 5).

Representative Drovdal: I have a lot of reading here to understand what you're doing or why you're doing it. Any property that the church owns would be exempt?

Representative Koppelman: That is not what the bill says but it could be something the legislature could enact if we choose. It is certainly how schools are treated to the best of my knowledge. Any land that is owned by the school is presumed to be for their purposes, an educational purpose, even if it's a farmer's field or a blank spot of land for hope of future expansion. If it's not for a profitable purpose my intent on the bill is that if it's part of your church property that land should not be taxed just because the footprint of the church under some formula is not yet large enough to reach that. If you own other property that is used for an income purpose for a church would be off limits and would be taxable. I would caution the committee if you amend the bill I would caution against the word "income." If a church says they are going to have a daycare center and they can't afford to do it for free but want to do it as a service to the community so they are going to charge but it's not for profit then I don't think that should jeopardize the tax exempt status of the church.

Representative Marie Strinden: Did the churches that were sent erroneous tax bills did they pay them and can they be readdressed?

Representative Koppelman: I assume that if they've been taxed they've paid. I don't believe the bill has a retroactive date on it and that is something else the committee could discuss to make it clearer. Representative Koppelman also passed out two attorney general's opinions (testimony #6 and 7).

Chairman Belter: Further testimony on 1300?

Representative Ben Koppelman: Refer to attached testimony #8. The church that was prefaced in Representative Koppelman's testimony is in my district. I brought a map so we can clearly see what is going on. Reference was made to the map which shows church property in West Fargo south of I-94. This property was purchased by a farmer at a time when West Fargo was located some distance north and later directly north of the interstate. At the time it was purchased it started out as a 10 acre parcel and that was the smallest parcel the farmer was willing to separate off from his agricultural land and sell to the church. Over time a number of things have changed; the red square is the property that currently the city says is tax exempt and the green square is showing the boundary of the property inside the roadways. On the east side of the property outside the red square is an easement to allow the original entrance to the farmsteads. When the farmer later decided to become a developer and develop those house lots around there he asked permission from the church to place roadways along two of the sides of the church so it ends up being on each person's property of the division line. Without any compensation as a result of that back to the church, the church knowingly said he could put the roads there so when the city took the land over property was lost. The green line represents the current property is and inside the red square is a building which is the church and a parking lot outside of it. The darker dirt color to the north and to the east contains drain fields for septic system, wells for geothermal heat, and other tanks for propane because at the time there was no city service. This is not land that can be developed or can do anything with other than mow the grass. The reason they excluded the land on the south was because it could be replatted and sold for residential house lots. The church didn't want to sell that land and wanted to keep it for future growth. They have been billed for the tax that will be due but they haven't paid it yet. They sold the south part of land and the money was consumed by special assessments and taxes. This is an example of how this church's ability to grow has been greatly reduced by an unintended consequence of legislation that attempted to save a church from tax and resulted in them being taxed.

Representative Marie Strinden: If the church doesn't pay their taxes and then we enact this bill, are they still liable unless we make the bill retroactive?

Representative Ben Koppelman: I believe the tax bill would go away. In this church's case where they haven't paid the tax I don't believe the getting the tax back that they already paid would be an issue.

Chairman Belter: Further testimony in support of 1300?

Keith Ritchie, Cornerstone Church, Bismarck: You had a crowd here representing your state in support of this bill. The very first sentence in the bill says, "All buildings owned by any religious corporation used for religious purposes." Many churches buy property and they are not tax exempt until we build a building on it and have church on it. Churches have received tax bills. We are working through you. Our specials last time were \$48,000 for repairing the roads and that may not seem like a lot but to a little church that is a lot of money. The same sentence in the constitution says that churches and schools are not taxed and if you do one then you have to do the other.

Representative Hatlestad: Can you tell me what property you're being assessed tax on?

Pastor Keith Ritchie, Cornerstone Church, Bismarck: It was originally on the corner of Wachter and Washington. I have 3.03 acres and have seven house lots on there. They didn't follow the original property lines. They couldn't tax me on the property facing Washington Street because then I would have to be given access to Washington Street and they didn't want to do that even though I would have been really happy about that.

Chairman Belter: Further testimony in support of 1300?

Tom Freier, North Dakota Family Alliance: See attached testimony #9.

Chairman Belter: Further testimony in support of 1300?

Bob Thune, First Evangelical Free Church: I'm new to North Dakota so I'm new to specials. I've lived in three other states and have never encountered specials before. They add an extra burden to the finances of a church. We recently had some year-end giving come in and I thought we could apply it to the mortgage we have on our facility but we owed about \$115,000 on specials so we made a decision to pay off the specials which was a good thing for us to do but that's an extra on our financial structure. Currently, we are being taxed some on our property so I would speak in favor of the bill.

Chairman Belter: Further testimony in support of 1300? Any opposition? Any neutral testimony? If not, I will close the hearing on 1300 for now but Representative Koppelman had asked to leave it open for written testimony but it will not be heard for further testimony.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee

Fort Totten Room, State Capitol

HB 1300

January 30, 2013

Job 18030

☐ Conference Committee

Kristie Helgler

Explanation or reason for introduction of bill/resolution:

A Bill relating to the property tax exemption for property of churches; and to provide an effective date.

Minutes:

Chairman Belter: Opens HB 1300. Wait on this one until the amendment comes down.
Closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee

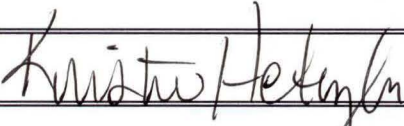
Fort Totten Room, State Capitol

HB 1300

February 5, 2013

Job 18342

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to the property tax exemption for property of churches; and to provide an effective date.

Minutes:

Chairman Belter: Opens HB 1300. Is there an amendment?

Rep (inaudible): Goes over amendment.

Rep Klein: Motion to adopt amendment.

Rep Strinden: Second.

Rep Hatlestad: Motion a Do Pass.

Rep Klein: Second.

Yes: 14

No: 0

Absent: 0

Carried by: Rep Hatlestad.

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. HB 1300

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Becky Keller
Senior Fiscal Analyst

VR
2/5/13
1082

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1300

- Page 1, line 7, after "buildings" insert "and land"
- Page 1, line 8, overstrike "services" and insert immediately thereafter "purposes"
- Page 1, line 8, overstrike ", and if on the same parcel, dwellings with"
- Page 1, overstrike lines 9 and 10
- Page 1, line 11, overstrike "within the perimeter of those buildings,"
- Page 1, line 11, remove the first "and"
- Page 1, line 11, overstrike "improved off-street parking"
- Page 1, line 11, remove the second "and"
- Page 1, line 12, overstrike "reasonable landscaping or sidewalk area adjoining"
- Page 1, line 12, remove "serving"
- Page 1, line 12, overstrike "the main church"
- Page 1, line 13, overstrike "building,"
- Page 1, line 14, overstrike "services" and insert immediately thereafter "purposes"
- Page 1, line 16, remove "b."
- Page 1, line 16, overstrike "If the residence of the bishop, priest, rector, or other minister in charge of"
- Page 1, overstrike line 17
- Page 1, line 18, overstrike "usual outbuildings and land on which it is located,"
- Page 1, remove line 19
- Page 1, line 20, remove "property used exclusively for religious purposes and"
- Page 1, line 20, overstrike "is exempt from taxation."
- Page 1, remove lines 21 through 24
- Page 2, line 1, replace "d." with "b."
- Page 2, overstrike line 3
- Page 2, line 4, overstrike "from" and insert immediately thereafter "person if"
- Page 2, line 4, after "rent" insert "received is used for the religious purposes of the religious corporation or organization"
- Page 2, line 5, after "is" insert "retroactively"
- Page 2, line 5, after "effective" insert "and applies"

2 of 2

Page 2, line 6, replace "2012" with "2010"

Page 2, line 6, after the period insert "The board of county commissioners may abate or refund taxes under this Act on its own motion or upon application of a property owner under chapter 57-23."

Renumber accordingly

Date: 2-5-13
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1300**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Klein Seconded By Rep. Strinden

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote

Motion Carried

Date: 2-5-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1300

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hatlestad Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	✓	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Hatlestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1300: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1300 was placed on the Sixth order on the calendar.

Page 1, line 7, after "buildings" insert "and land"

Page 1, line 8, overstrike "services" and insert immediately thereafter "purposes"

Page 1, line 8, overstrike ", and if on the same parcel, dwellings with"

Page 1, overstrike lines 9 and 10

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Page 1, line 13, overstrike "building,"

Page 1, line 14, overstrike "services" and insert immediately thereafter "purposes"

Page 1, line 16, remove "b."

Page 1, line 16, overstrike "If the residence of the bishop, priest, rector, or other minister in charge of"

Page 1, overstrike line 17

Page 1, line 18, overstrike "usual outbuildings and land on which it is located,"

Page 1, remove line 19

Page 1, line 20, remove "property used exclusively for religious purposes and"

Page 1, line 20, overstrike "is exempt from taxation."

Page 1, remove lines 21 through 24

Page 2, line 1, replace "d." with "b."

Page 2, overstrike line 3

Page 2, line 4, overstrike "from" and insert immediately thereafter "person if"

Page 2, line 4, after "rent" insert "received is used for the religious purposes of the religious corporation or organization"

Page 2, line 5, after "is" insert "retroactively"

Page 2, line 5, after "effective" insert "and applies"

Page 2, line 6, replace "2012" with "2010"

Page 2, line 6, after the period insert "The board of county commissioners may abate or refund taxes under this Act on its own motion or upon application of a property owner under chapter 57-23."

Renumber accordingly

2013 SENATE FINANCE AND TAXATION

HB 1300

2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1300
3/19/2013
Job Number 20119

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for property of churches; and to provide an effective date.

Minutes:

Testimony Attached

Chairman Cook opened the hearing on HB 1300.

Representative Koppelman introduced HB 1300 (attachments 1-3).

Senator Oehlke - I can give you a little brush stroke of what happened last session. The bill that was brought to us was designed to expand up to 20 acres around a particular church or religious area and allow that to be tax free, and then in our research we found that counties and cities had actually been in violation of century code by not taxing church property. Sometimes you get what you ask for. It isn't exactly what you thought it might be and I think that is what happened in this situation. It was pointed out to the cities and counties that they did not have the right under existing century code, constitution be what it may, to give those kinds of tax breaks. In the end the 20 acres was narrowed down to 2 and it allowed for any place that had a religious purpose or what have you but everything else was subject to tax. So, sometimes you get what you ask for. Can you tell me what a religious purpose is?

Representative Koppelman - I'm not sure if that is within my pay grade or not. I know that is a difficult thing to...

Senator Oehlke - My point relative to the constitution is back then churches didn't do a lot of things that they do now. They've stretched a lot of time into operating businesses, daycares is a good example. For them to be competing with private institutions that have to pay those property taxes and that type of thing seems to me a little bit unfair even though you get blessed by someone when you walk through the door. Why should we treat that differently?

Representative Koppelman - I think that your first statement, you are correct. There was probably a feeling among city officials and other taxing authorities that they had a responsibility to tax where they hadn't before. I didn't mean to imply in my testimony that I

was entirely blaming them because I think you are right. They got that message. Whether that message is correct and whether it's constitutional or not is another issue. Two attorney general's opinions would seem to feel that it's not. I would agree. When I discovered this and started digging into it my son Ben who is now a legislator was president of our local school board. I called him and said Ben, I'm looking at the constitution here, in the very same sentence it says that land owned by schools and churches that is used for religious purposes is not taxable. So I'm curious, how much tax does the school district pay on the land it owns. He called the business manager and called me back and said you know what, not only do we not pay any tax on school property, even the land we own that's producing income for us, that's making us a profit; we don't pay any tax on. I think we are precariously in dangerous territory if this would ever be challenged in a court. So the problem becomes, now you can have the debate of, if a church buys an office building as an income property, should that be taxed. I don't think churches are asking for that kind of property to be nontaxable. But, if you read the constitution strictly I think you could make a legal argument that perhaps it should not be. But that's not really what the point is. That phrase for religious purpose is in there. (18:35)

Senator Triplett - Senator Oehlke is right I was here last time and I do recall this debate. We did study and analyze those 2 attorney general's opinions that you have referenced very carefully. My recollection is that Senator Hogue who was on the committee then but is not this year and as you know is an attorney was in charge of the subcommittee that was assigned. We don't often assign subcommittees because our committees are so much smaller than yours are on the House side, but in this case because we thought it was such a serious issue we did have a subcommittee. There was certainly no intention on the part of the committee to do anything that was violating of the constitution. We took our responsibility very seriously and we did this very carefully. I can't say this for a fact because I wasn't on the subcommittee but I believe that Senator Hogue also consulted with the attorney general's office in the language that we ended up putting together. My question at this point is, rather than coming back to the legislature for a quick fix since it's only been 2 years since we did this, did you or anyone else consider asking for an attorney general's opinion to analyze this?

Representative Koppelman - I did not personally because I found 2 attorney general's opinions that had dealt with it I thought pretty thoroughly. To my knowledge the constitution hasn't changed since those 2 opinions. (20:57)

Senator Triplett - I think the opinion of our collective finance committee from last time around ought to be entitled to some respect as well and I mean the question seriously, why would it not have been more effective to go back and ask for an attorney general's opinion given that this was a different piece of legislation that the 2 previous attorney's general obviously had not had a chance to look at. This bill was brought to us by people from churches. They asked for further definition. We certainly did amend the bill they brought to us, but we were doing it sort of as a favor to the religious community who wanted some clearer definition. We could have just killed the bill and said self-executing, figure it out yourself, but we were trying to be accommodating.

Representative Koppelman - The current attorney general did not, to my knowledge write an opinion on this. I asked the legislative council to help research it, which was the direction

I went. I think it's pretty clear what the constitution says and that trumps anything we as a legislature do.

Senator Burckhard - Did I hear you say that churches were forced to sell off property?

Representative Koppelman - Yes, because they couldn't afford the additional taxes.

Senator Miller - I think initially when we passed this bill last session I think we all feel that yes the constitution says churches can do whatever, but then again a church, they get land given to them and everything, at some point there has to be a definition of how much land they can actually own.

Representative Koppelman - I think it's something this committee probably would want to look at. If you are talking about farmer Jones passes away and has in his will that ABC church inherits the quarter land that he bequeath to it and farmer Smith continues to farm that land for the next 40 years and it creates a profit center for the church, should that land be taxable as agricultural land? I think that is a debatable point. But if you're going to debate that, you ought to have the same debate with respect to schools. (27:02)

Senator Dotzenrod - I think following your remarks I think the problem is the word exclusively. I think exclusively creates the dilemma for the legislature. I think without the word exclusively everything you've said I would have to agree with but when they put the word exclusively it creates I think a question for the legislature to decide, try to figure out some way to put some definitions in there. School property you drew the parallel between school property and church property. There is no exclusively in the constitution related to school property. (28:40)

Representative Koppelman - I would say the religious purpose issue might be a closer issue to analyze. I don't think by any stretch you can say this blade of grass is a religious this one is not. (30:18)

Senator Oehlke - You mentioned earlier that one of the churches had a lot of special assessments and that was a problem for them. This bill doesn't address special assessments. Specials are off the table here.

Representative Koppelman - The only reason I mentioned that is to illustrate the point that there is an excessive burden already.

Senator Oehlke - I think you mentioned John Walstad's letter that he gave you kind of was a 'oh gee that's too bad that's not the way we meant it' type attitude. In my reading it and knowing anybody from Legislative Council they never give you an opinion. If John walked in here today and stood at that microphone he would say he has no opinion and that is the letter that is here. I don't recognize that as any kind of an opinion, so I agree with Senator Triplett if we want an opinion we are going to have to go to the AG's Office.

Representative Koppelman - I had several visits with Mr. Walstad and I asked him the point blank question, what do you see in this legislation, can it be interpreted this way and so on. What he said in the letter and I understand that attorneys word letters artfully, but I

think what he said is, in our telephone discussion you told me you were very surprised to learn that a church in your legislative district recently received a notice of property tax due on property previously treated as exempt under property tax exemptions. Your recollection is accurate etc. and I guess maybe you are right, he doesn't indicate in the letter the same concurrence with that surprise that he did on the telephone. (33:08)

Randy Jaspers, Temple Baptist Church - See attached testimony 4.

Senator Triplett - Your first point where you say that taxing religious organizations discourages them from long term planning which in turn hinders community development. I think the testimony that we heard last time was the opposite from some of the cities that if a church chooses to, receives by bequest, or something, maybe on the edge of a growing city but doesn't develop it, and then the city is forced to grow around it, that really, the churches ownership of that large parcel of land is hindering community development not the other way around. You can look at it from both sides. Then on your second point you say that religious organizations pay for special assessments and that organizations cannot afford to own large tracks that are not used or planned for future use and again, I think that may be true in some circumstances if it is interior to a city but it also may not be true in other circumstances.

Randy Jaspers - I see where that could work both ways and could hinder, but in reality a city is going to be having their city planning if a church is purchasing on the fringe of a community that is growing you are going to be continuing to expanding out. Now at some point there's a give and take. I'm sharing from the perspective of one that's been on the other end of things to where for in our purposes for instance, 6 months after we purchased our land which we would have never been able to do, the Jamestown Public Schools purchased 70 some acres just directly to the east of us. We would have never gotten the portion of ground that we did had that happened later. (42:35)

Senator Miller - The land that you bought was farm land?

Randy Jaspers - Yes

Senator Miller - And it continued to be farmed until you begin construction?

Randy Jaspers - Correct

Senator Miller - How much land did you actually purchase?

Randy Jaspers - 14 acres of course with streets it wasn't that much. (44:24)

Senator Miller - When you were collecting rent off that land you were paying taxes on that land?

Randy Jaspers - Yes

Senator Dotzenrod - Did you say that we could be reaching if we are not careful we could be reaching a point in the future when churches cannot afford to own more land than they can use?

Randy Jaspers - Definitely (46:16)

Senator Dotzenrod - The constitution says you get to have no taxes on property that is used exclusively for religious purposes. So if you are not using the land wouldn't that mean it should be taxed?

Randy Jaspers - I'm not arguing that point and we did pay it.

Senator Dotzenrod - You are okay with the current law?

Randy Jaspers - I'm not okay with the current law. My problem with the current law is that it narrowly defines that. Because our land is a little bit larger in that amount for future planning we end up being assessed a property tax on that portion of the land. It's still being used for religious purposes but it's beyond what you would say the footprint, I believe the previous legislation has the footprint plus parking plus reasonable areas around it and so it goes beyond that. It's a little too large according to the legislation previously passed.

Keith Ritchie, Cornerstone Church - Originally we were assessed land property and with the last fix you did fix us. Now specials, all churches pay specials, this last 2 years I got \$48,000 in specials for repaving the road. That is just part of life. The simple fact is that when we buy land we pay taxes on it until we occupy it for church services. It does affect many churches in our denomination. Our Williston church now has traded land with the city of Williston, we actually made a trade. They wanted to change a road; we said okay we'll change it. We pay taxes around the state in our different churches. The simple fact of this is we have been approached by people wanting to represent us. We do not want to do the court program; we are depending upon you to solve this problem going forward. (50:28)

Senator Triplett - The previous speaker suggested as I think you are, that basically any contiguous property of land if there's a church on it ought to be considered exclusively for church purposes. When is it too large? If you go out and buy a quarter section of land and it's right on the edge of the city and you put a church in the corner of it, do you really think that you should have the entire quarter section free and clear?

Keith Ritchie - No, in all fairness no that's not what anybody said. Originally when the bill came to you last session it was 20 acres. That was a reasonable figure. When you go down to 2 even I don't qualify under the 2. I was blessed that our local assessor's office showed me how to expand my parking lot so I could beat the law. (51:54)

Representative Ben Koppelman - See attachment 5.

Tom Freier, North Dakota Family Alliance - I'm here in support of HB 1300. I will say anecdotally that given the fact that there are a number of churches that are having issues I think it would stand to reason that we would have to conclude that what did happen last time did not solve the problems that we are having. (1:00:42)

Senator Oehlke - The testimony we've heard this morning, most folks are most concerned about the huge specials they are paying. It doesn't seem like, they mention the 2 acres and so on but it's the special assessments that sound like their killing them. Are you making the same argument to the various cities and counties to get specials relieved? It seems like that's where this argument should be made.

Tom Freier - No, I'm not. I think what we've heard this morning is that everyone understands the nature of specials and yes indeed specials do have a great impact.
(1:03:21)

Bill Wocken, City of Bismarck - I very rarely stand neutral on a bill. In this particular bill my city has not taken a position on the bill but there are some very important questions that my assessor has asked that I need to relay to you. The only concern that we have with the bill is lines 20-24 on page 1 that is the exemption for buildings which generate income where that income is used for religious purposes of the religious corporation or organization. The concern we have, the present standard is simply that if it's not tax exempt, it's taxed. This would change that to simply say that if its income that is received that income if used for religious purposes makes this exempt. That puts a lot of weight on the assessor's shoulders and my assessor has come to me and said how do I know? Do I ask for an audit do I ask for a financial statement, how do I know?

Senator Miller - With regards to how do you know, if it's farm land and it's being farmed it's pretty obvious that they are probably getting some income off of it and you ask. If it's an office building that they own and it's not adjacent to the church and there is people going in and out that you know aren't clergy then you know that they are probably getting income and you ask.

Bill Wocken - The problem is not in whether there is income that is generated it is how it's used. The bill specifies that it has to be used for religious purposes of the corporation and that's the question my assessor has. How will we know that?

Chairman Cook closed the hearing on HB 1300.

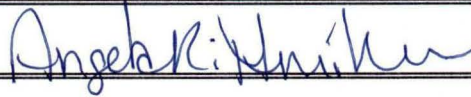
2013 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB 1300
4/5/2013
Job Number 20926

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for property of churches; and to provide an effective date.

Minutes:

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Chairman Cook opened discussion on HB 1300.

Vice Chairman Campbell handed out proposed amendment (attachment 6) changing 2 acres to 5 acres.

Senator Oehlke - Are we addressing anything under item b?

Chairman Cook - B has got to go too. Just add (to the Campbell amendment) remove all the overstrike under 9b.

Senator Triplett - Just revert it to its original.

Senator Dotzenrod - The only issue I have with this whole question is when you take property out of the system of income for the city it is an imposition on the residents of the city. That becomes a burden for them and as you make this larger that level of imposition becomes greater. (4:30)

Brief discussion followed.

Senator Burckhard - I'll move the amendment.

Seconded by **Vice Chairman Campbell**.

Verbal Vote on Amendment 7-0-0

Vice Chairman Campbell - I'll move a **Do Pass as Amended**.

Seconded by **Senator Burckhard**.

Roll Call Vote 7-0-0

Carried by **Vice Chairman Campbell**.

April 5, 2013

4513
TD

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1300

Page 1, line 7, remove "and land"

Page 1, line 8, remove the overstrike over "~~services~~"

Page 1, line 8, remove "purposes"

Page 1, line 8, remove the overstrike over "~~, and if on the same~~"

Page 1, remove the overstrike over lines 9 through 12

Page 1, line 13, remove the overstrike over "~~building, and up to a maximum of~~"

Page 1, line 13, after "~~two~~" insert "five"

Page 1, line 13, remove the overstrike over "~~additional acres~~"

Page 1, line 13, after "~~hectare~~" insert "2.02 hectares"

Page 1, line 13, remove the overstrike over the overstruck ending bracket

Page 1, line 14, remove the overstrike over "~~services~~"

Page 1, line 14, remove "purposes"

Page 1, remove the overstrike over lines 16 through 19

Page 1, remove the overstrike over line 22

Page 1, line 23, remove the overstrike over "~~from~~"

Page 1, line 23, remove "person if"

Page 1, line 23, remove "received is used for the religious purposes of the religious"

Page 1, line 24, remove "corporation or organization"

Renumber accordingly

Date: 4-5-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1300

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.0467.02501

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Burckhard Seconded By Senator Campbell

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Tom Campbell			Senator Connie Triplett		
Senator Joe Miller					
Senator Dave Oehlke					
Senator Randy Burckhard					

Total (Yes) 7 No 0

Absent 0

Floor Assignment Verbal vote

If the vote is on an amendment, briefly indicate intent:

Date: 4-5-13
Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1300

Senate Finance & Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senator	Yes	No
Chairman Dwight Cook	<input checked="" type="checkbox"/>		Senator Jim Dotzenrod	<input checked="" type="checkbox"/>	
Vice Chairman Tom Campbell	<input checked="" type="checkbox"/>		Senator Connie Triplett	<input checked="" type="checkbox"/>	
Senator Joe Miller	<input checked="" type="checkbox"/>				
Senator Dave Oehlke	<input checked="" type="checkbox"/>				
Senator Randy Burckhard	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Campbell

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1300, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1300 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "an"

Page 1, line 3, replace "effective date" with "for retroactive application"

Page 1, line 7, remove "and land"

Page 1, line 8, remove the overstrike over "~~services~~"

Page 1, line 8, remove "purposes"

Page 1, line 8, remove the overstrike over "~~and if on the same~~"

Page 1, remove the overstrike over lines 9 through 12

Page 1, line 13, remove the overstrike over "~~building, and up to a maximum of~~"

Page 1, line 13, after "~~two~~" insert "five"

Page 1, line 13, remove the overstrike over "~~additional acres~~"

Page 1, line 13, after "~~hectare~~" insert "2.02 hectares"

Page 1, line 13, remove the overstrike over the overstruck ending bracket

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Page 1, line 23, remove the overstrike over "~~from~~"

Page 1, line 23, remove "person if"

Page 1, line 23, remove "received is used for the religious purposes of the religious"

Page 1, line 24, remove "corporation or organization"

Page 2, line 1, replace "**EFFECTIVE DATE**" with "**RETROACTIVE APPLICATION**"

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1300

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee

Fort Totten Room, State Capitol

HB 1300
April 18, 2013
Job # 21235

☒ Conference Committee

Committee Clerk Signature

Jocelyn Gallagher

Explanation or reason for introduction of bill/resolution:

A Bill for an Act to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for property of churches; and to provide for retroactive application.

Minutes:

No attachments

Chairman Hatlestad: I would like the senate to explain their amendments.

Senator Campbell: Explained the changes on their amendments.

Representative Froseth: As the bill left the house we had amended it from previous sessions to put two acres back in. The footprint of the church is what was exempt. Two acres isn't nearly enough in today's world. I don't even know if the five acres is enough with today's facilities and how things are built.

Senator Triplett: The language still includes the actual land area directly under the building and before you start counting toward the five acres it includes off-street parking. They can build the building and parking lot as large as they want before they start counting the acreage. The five is over and above that. The reason it changes two to five is we had some testimony to their situation.

Senator Campbell: In line 18 I wanted to move it up to five acres but we chose not to because of opposition in our committee. The adjacent property was kept at the two acres.

Chairman Hatlestad: On line 7, where it says all buildings, do we need to include "and land", because the parking lot obviously is not a building.

Senator Triplett: I think we do if you keep reading the rest of the sentence. I think it is included in there.

Representative Froseth: I don't see anything wrong to increasing the size to 20 acres. It would still be up to the local taxing district to determine what is being used for religious purposes.

Senator Oehlke: That's where we ran into problems two years ago by leaving it up to the local taxing districts. They didn't realize they had technically not been taxing religious property in communities not in accordance with state century code.

Senator Triplett: Maybe we are interpreting this differently. I read this that there would be no discretion on the part of the tax assessors. I think there has to be some kind of balance between the interest of the state and religious organizations.

Chairman Hatlestad: I need some clarification. Seemed to me churches have to pay specials which would take care of the streets and gutters.

Senator Campbell: Yes, churches do have to pay specials. Churches and schools have always been exempt and we're almost going contrary to the exemption.

Chairman Hatlestad: When we did this two years ago the assessors said they would not tax churches. Going to five acres is a significant improvement.

Representative Froseth: Would you want to hear from the tax department on how this would work for them and their city?

Chairman Hatlestad: If we expand it to five acres does that take care of most of the problems we've encountered.

Marcy Dickerson, State Supervisor of Assessments: The expansion to 5 acres is good. I don't really like the idea of going to 20 acres. I think it is adequately generous when adding another 5 acres to the exemption.

Chairman Hatlestad: Any other questions, comments? Are we ready to make a motion?

Representative Froseth: I move an amendment on line 13 we increase that to ten acres.

Senator Triplett: Seconded for discussion purposes.

Chairman Hatlestad: We have a second on the motion, is there any discussion on the motion to increase from 5 additional acres to 10?

Senator Oehlke: I would ask what would be the justification for doing that?

Representative Froseth: It states that it has to be used for religious services.

Chairman Hatlestad: I will have the clerk call the roll on the motion to increase the acreage from 5 to 10.

Roll vote, motion fails.

Chairman Hatlestad: Would we like time to do some consideration, come back for one more meeting. We will schedule one more meeting.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1300
April 18, 2013 pm
Job # 21268

☒ Conference Committee

Mary Brucker

Minutes:

Attached amendment #1.

Chairman Hatlestad: What we have here are the amendments we went through this morning. I would entertain a motion on the top of the proposed amendments that say the senate recedes from its amendments as printed on the pages of the house journal and the pages on the senate journal and that the engrossed house bill number 1300 be amended as follows. Distributed amendments 13.0467.02002. See attached amendment #1.

Rep. Froseth: I move the amendment 2002.

Senator Campbell: Second.

Senator Campbell: Could you sum up we are going from the 2 to 5 and changing the verbiage from religious service to religious purpose. Is that what we are addressing here?

Chairman Hatlestad: The only thing that we agreed to change was the "services" to "purposes" and then the five acres and then everything else that the senate had put in there is included in these amendments.

Senator Oehlke: I think you have no acres in here now.

Chairman Hatlestad: No, on page 1 line 13 after 2 insert 5 it says.

Senator Campbell: Did they remove in 2 places religious service to purpose?

Chairman Hatlestad: It's supposed to be. Once we pass the amendment then they can get us a printed copy of the finished document.

ROLL CALL VOTE:

YES 6 No 0 Absent 0

MOTION CARRIED FOR SENATE RECEDES FROM SENATE AMENDMENTS AND FURTHER AMENDS.

Meeting adjourned.

13.0467.04000

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. HB 1300

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Becky Keller
Senior Fiscal Analyst

18/1
LSC

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1300

That the Senate recede from its amendments as printed on pages 1301 and 1302 of the House Journal and pages 1184 and 1185 of the Senate Journal and that Engrossed House Bill No. 1300 be amended as follows:

Page 1, line 2, remove "an"

Page 1, line 3, replace "effective date" with "for retroactive application"

Page 1, line 7, remove "and land"

Page 1, line 8, remove the overstrike over "~~, and if on the same~~"

Page 1, remove the overstrike over lines 9 through 12

Page 1, line 13, remove the overstrike over "~~building, and up to a maximum of~~"

Page 1, line 13, after "~~two~~" insert "five"

Page 1, line 13, remove the overstrike over "~~additional acres~~"

Page 1, line 13, after "~~hectare~~" insert "2.02 hectares"

Page 1, line 13, remove the overstrike over the second closing bracket

Page 1, remove the overstrike over lines 16 through 19

Page 1, line 20, overstrike "services" and insert immediately thereafter "purposes"

Page 1, remove the overstrike over line 22

Page 1, line 23, remove the overstrike over "~~from~~"

Page 1, line 23, remove "person if"

Page 1, line 23, remove "received is used for the religious purposes of the religious"

Page 1, line 24, remove "corporation or organization"

Page 2, line 1, replace "EFFECTIVE DATE" with "RETROACTIVE APPLICATION"

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Finance + Tax

Bill/Resolution No. 1300 as (re) engrossed

Date: 4-18-13 am meeting

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Froseth Seconded by: Sen. Triplett

Representatives	4-18		Yes	No		Senators	4-18		Yes	No
Chairman Hatlestad	✓		✓			Senator Campbell	✓		✓	
Rep Froseth	✓		✓			Senator Oehlke	✓			✓
Rep Haak	✓			✓		Senator Triplett	✓			✓

Vote Count Yes: 3 No: 3 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Line 13 increase to 10 acres from 5 acres.

MOTION FAILS.

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Finance + Tax

Bill/Resolution No. 1300 as (re) engrossed

Date: 4-18-13 pm meeting

Roll Call Vote #: 1

Action Taken

- ☐ HOUSE accede to Senate amendments
☐ HOUSE accede to Senate amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1301 -- 1302

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Frozeth Seconded by: Sen. Campbell

Representatives				Yes	No	Senators				Yes	No
Chairman Hatfield	✓			✓		Senator Campbell	✓			✓	
Rep Frozeth	✓			✓		Senator Oehlke	✓			✓	
Rep Haak	✓			✓		Senator Triplett	✓			✓	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Amendments 13. 0467.02002 attached.
Pg. 1 line 13 after "two" insert "five"

REPORT OF CONFERENCE COMMITTEE

HB 1300, as engrossed: Your conference committee (Sens. Campbell, Oehlke, Triplett and Reps. Hatlestad, Froseth, Haak) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1301-1302, adopt amendments as follows, and place HB 1300 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1301 and 1302 of the House Journal and pages 1184 and 1185 of the Senate Journal and that Engrossed House Bill No. 1300 be amended as follows:

Page 1, line 2, remove "an"

Page 1, line 3, replace "effective date" with "for retroactive application"

Page 1, line 7, remove "and land"

Page 1, line 8, remove the overstrike over ", ~~and if on the same~~"

Page 1, remove the overstrike over lines 9 through 12

Page 1, line 13, remove the overstrike over "~~building, and up to a maximum of~~"

Page 1, line 13, after "~~two~~" insert "five"

Page 1, line 13, remove the overstrike over "~~additional acres~~."

Page 1, line 13, after "~~hectare~~" insert "2.02 hectares"

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Page 1, line 23, remove "person if"

Page 1, line 23, remove "received is used for the religious purposes of the religious"

Page 1, line 24, remove "corporation or organization"

Page 2, line 1, replace "**EFFECTIVE DATE**" with "**RETROACTIVE APPLICATION**"

Renumber accordingly

Engrossed HB 1300 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1300

#1

TESTIMONY ON HOUSE BILL 1300

2013

Mr. Chairman and Members of the Committee;

Last session, we passed legislation to protect churches from property taxes. We did this by expanding the definition in law of land mass that it is absolutely forbidden to tax. The result, ironically, is not that churches are being taxed less, but that they are being taxed more! In fact, some are being taxed for the first time ever. This not only violates legislative intent, it is clearly unconstitutional.

Two North Dakota Attorney General's Opinions make it very clear that our Constitution forbids the taxation of church property.

A 1981 Opinion by AG Robert Wefald states, in part:

"If a church uses real property in excess of two acres for religious purposes all the land so used even though it is in excess of two acres is eligible for a real estate tax exemption provided that the use of the real property by the church is reasonably necessary and that it is actually used exclusively for religious purposes."

...and "If more than two acres of land are used exclusively for religious purposes, the acreages so used would be exempt under Section 5 of Article X of the Constitution and would not be limited to the two-acre exception created by subsection 9 of section 57-02-08, N.D.C.C. ***In a conflict between a statute and a provision of the Constitution, the Constitution prevails.***"

(emphasis added)

A later Opinion, in 1995, by AG Heidi Heitkamp reaches concurring conclusions, stating, in part:

"the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious purposes by the exemptions in N.D.C.C. 57-02-08 (7) and (9) because Article X, Section 5 is self-executing..."

"...property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature."

"Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature."

"The clear purpose of making these exemptions self-executing was to remove the discretion of the Legislature under Engstad to restrict exemptions that are only mandated by the constitution."

...and "Therefore, because this exemption is effective regardless of statutory authority, subsections (7) and (9) of N.D.C.C. 57-02-08 supplement rather than restrict that exemption."

The intent and effect of the North Dakota Constitution is clear. Property owned by a church to carry out its religious purposes is nontaxable.

1/2

The Legislature does not have the authority to define a "religious purpose", by acreage or any other means. For the Legislature to have such authority would not only fly in the face of this provision of the North Dakota Constitution, but also the bar in the First Amendment of the United States Constitution against the infringement of religious liberty, in my opinion.

I don't believe, however, that this is an authority that the North Dakota Legislature has tried to assert. Instead, my investigation and analysis leads me to believe that our Legislature has placed definitions in law which have included acreage, for example, to prevent eager taxing authorities from violating the Constitution and taxing church property; in other words to clearly define what is absolutely nontaxable, not to imply that property not falling into that description is, in fact, taxable.

The Attorney Generals' Opinions referenced, particularly the latter one, makes this quite clear by asserting that the Constitutional exemption is self-executing. In other words, not only does it not take Legislative action to activate it, but also no action by the Legislature can curtail it.

This alarming new taxation of churches prompted my initial inquiry with the North Dakota Legislative Council. You'll find that the response of the Chief Code Reviser, Mr. John Walstad, indicates similar amazement at how anyone could interpret our expansion of non-taxable land as a license to tax more.

The bottom line, from my study and conversations on this matter, is that I believe that taxing authorities are interpreting the legislation passed last session as a "bright line test". They believe the Legislature has told them to tax up to the point outlined in the law (even though the Legislature expanded the area which was forbidden to be taxed).

The two Attorney General's Opinions I've researched bolster the reading that property owned and occupied by churches for religious purposes is nontaxable. They clearly show that the Constitutional principle trumps any specific definition in statute, which means that taxing authorities can--and, I would submit, MUST--refrain from taxing a larger area which still meets the Constitutional definition.

This, however, is not how North Dakota taxing authorities have apparently responded. Instead, they have descended upon church property with tape measures and aerial photographs to attempt to determine what are they now believe is taxable.

I attempted to resolve this matter by intervening for a church in my district which is being excessively burdened with new taxation. I am furnishing you with the letter I wrote to the local tax assessor, which contains my analysis of the issue. I also made county and state officials aware of the problem. The result, for this church, was an eventual reduction in the amount that was previously threatened to be taxed, but a large property tax assessment, for the first time ever, nonetheless. This burden forced the church to subdivide and sell some of its lot, because it could not afford the taxes.

I am told that there have been discussions with legal experts who are willing to represent North Dakota churches, on this matter. So far, to the best of my knowledge, no lawsuits have ensued, I believe, because those churches are looking to us, in the Legislature, to correct this problem. They should be congratulated for their restraint because, it would appear, if such lawsuits ensued (as they may if we fail to act) that the churches would easily win.

No one wants churches suing communities or our state, least of all the churches, themselves. We must prevent that by doing the right thing, through this legislation.

P.3-1#

Churches and their influence in our state and communities are being harmed. Their potential growth is being thwarted by the very communities they exist to benefit. Land purchased for worship and for the growth of churches has been forced to be sold, because congregations can't afford the taxes currently being assessed. Many, already burdened with crippling special assessments (often also arguably unwarranted or excessive) are now, for the first time ever, suffering the additional burden of financially-crippling property taxation!

Churches should not cower in fear of their government. The power to tax is the power to destroy. Destroying churches is certainly not our aim. We should not allow it to be the unintended effect of misinterpretation of our law and Constitution, either.

It's time to ensure that our law clearly matches our Constitution, by removing church property definitions, descriptions, or references to acreage. These provisions have apparently misled taxing authorities into the assumption that they have the authority--or, worse yet, the requirement--to tax church property, despite the freedom from this taxation guaranteed by our Constitution.

Mr. Chairman, Members of the Committee, I don't believe, as a legislator, that I've ever seen a clearer opportunity to uphold my oath of office or to "right a wrong" in our government. Our responsibility, now, is to end this practice, once and for all, to make it crystal clear that the North Dakota Legislature upholds the Constitution, as we've each sworn to do, and to ensure that the religious freedom guaranteed by the founders of our state and nation is upheld.

Mr. Chairman and members of the Committee, I respectfully ask you to give HB 1300 a resounding "Do Pass" recommendation to help accomplish this important purpose. Thank you.

Respectfully Submitted,

Rep. Kim Koppelman

West Fargo, ND -- District 13

Chairman, Judiciary Committee,

Chairman, Administrative Rules Committee

Past Chairman, Constitutional Revision Committee,

Past National Chairman, The Council of State Governments (CSG)



North Dakota Legislative Council

July 11, 2011

Honorable Kim Koppelman
State Representative
513 First Avenue NW
West Fargo, ND 58078-1101

Dear Representative Koppelman:

In our telephone discussion, you told me you were surprised to learn that a church in your legislative District recently received a notice of property taxes due on property previously treated as exempt under the property tax exemption for church property. You said you remember 2011 House Bill No. 1246 increased, rather than decreased, the amount of land exempt for church use. Your recollection is accurate.

Under North Dakota Century Code Section 57-02-08(9), through tax year 2010, up to two acres of church property was required to be exempt from taxation if either the church or residence of the minister in charge of services is located on the property. As amended by 2011 House Bill No. 1246, the provision now requires that the land under the church and off-street parking and reasonable landscaping or sidewalk area up to a maximum of two additional acres must be exempted from taxation. In addition, if the residence of the minister in charge of services is on property not adjacent to the church, that residence and out buildings and up to two acres of additional land must be exempt from taxation. It does not appear that a church that was not subject to tax on land in 2010 would become subject to tax on land in 2011 unless the church has acquired additional acreage.

We hope this provides useful information. Please let us know if you require further information.

Sincerely,

John Walstad
Code Revisor

7-28-11

Ms. Wanda J. Wilcox, Assessor
City of West Fargo
800 4th Avenue East
West Fargo, ND 58078

Dear Ms. Wilcox;

I have been contacted by Shiloh Evangelical Free Church in West Fargo, regarding a letter the church recently received from your office. In it, you indicate that, due to actions taken by the North Dakota Legislature during its session earlier this year, the City of West Fargo is forced to tax a portion of the church's property which has never before been subject to taxation.

I believe that this conclusion is completely erroneous and I encourage you to reconsider it immediately, before damage is erroneously imposed upon this and, potentially, other churches which may be incorrectly placed in the crosshairs of taxing officials by a misreading of legislative action.

I was shocked that any church would be told that any action of the 62nd Legislative Assembly would somehow impose property taxes where none were previously levied, so I have completed a thorough review of this matter, including a review of the bill in question, the complete legislative history relative to its passage, and some Constitutional implications regarding the matter. I have also consulted with the Chief Code Revisor of the North Dakota Legislative Council, the Legislature's legal staff, who is also our staff attorney who specializes in tax law. This work has led me to conclude that you have misinterpreted the law in question and the intent of the Legislature and that you may be unaware of the protection from taxation afforded churches and religious organizations by the North Dakota Constitution.

7-28-11

Wanda Wilcox, Assessor, West Fargo, ND

Page Two

I have been given a copy of the letter you sent to the church, in which you reference House Bill 1246. However, you completely misstate its effect. Your opening paragraph states that "The change in the law grants exemption to the structures and the land directly under the buildings and up to a maximum of two additional acres of land. Any additional land must be assessed for property tax purposes effective January 1, 2011." (emphasis added).

These statements are completely false and represent a completely erroneous reading of this legislation, the legislative history of its contemplation and passage, and the North Dakota Constitution.

The North Dakota Constitution, in Article X, holds that "property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."

The Legislature has attempted, over the years, to preserve this Constitutional tenet by adamantly prohibiting the taxation of particular parcels owned by churches and used for religious purposes. These statutes have not limited the amount of land that would be free from taxation, but have, instead, set forth particular parameters for parcels which were absolutely forbidden to be taxed. Larger portions of land which were used for similar purposes were typically not taxed by taxing units of local governments.

Please note that, in the language of both previous North Dakota law, and in the language of this bill which altered it, it speaks to areas which "must be deemed to be property...exempt from taxation". This is a prohibition of taxing the parcels thus defined, not a demand to tax anything exceeding such a description. The Legislature left it to local officials to expand the definition, beyond these parameters, of exempted property to include the size and use of land owned by churches in their local taxing areas. This was the common practice throughout the state, including in the city of West Fargo.

Previously, North Dakota law expressly exempted a total of two acres, under this theory. While this was the law, West Fargo did not tax the land owned by Shiloh Evangelical Free Church or other churches.

House Bill 1246 *expanded* the amount of land forbidden to be taxed to the footprint of buildings, reasonable landscaping, sidewalks, outbuildings, parking, etc., plus two additional acres. *It did not demand that anything outside that area be taxed*. It simply clarified, in law, that a larger area than had previously been specified in Century Code could not be taxed.

Please see the enclosed letter from Legislative Council Attorney and North Dakota's Chief Code Revisor John Walstad, confirming these facts and clarifying the Legislature's intent, in passing this legislation.

Legislative intent can further be discerned by a careful examination of the legislative history of this measure. As originally introduced and passed in the House of Representatives, the bill originally expressly exempted 20 acres owned by a church and used for religious purposes from taxation. Although the bill was subsequently changed to its current form, the intent was consistent.

In a hearing of the House Finance and Taxation Committee on HB 1246, the bill's prime sponsor, Rep. Robin Weisz stated: "This bill says that any religious corporation or organization's property would be exempt from property tax if it's not producing revenue." He later confirmed "I guess if they (churches) own the property and they are not using it for any income producing purposes I guess I still don't have a problem with it being exempt".

#3
p. 2

#33
p. 3

7-28-11

Wanda Wilcox, Assessor, West Fargo, ND

Page Three

This idea was confirmed in a later Senate hearing on the bill by Sen. James Dotzenrod, who stated: "...the communities are free to exempt what they want even under the law we have right now. If a city saw that it was over two acres but just felt it was a legitimate religious organization doing what they normally do..cities...let those properties go and they always have that right."

These themes of clearly understood legislative intent are common throughout the voluminous legislative history of HB 1246.

The fact that assessors have historically held church property exempt (in keeping with the North Dakota Constitution and the spirit of state law) was also confirmed in the Legislative hearing by Mr. Kevin Ternes, city assessor from Minot, ND, who, testifying in the House hearing, stated "...if you have over two acres of land but you're using it for parking or for anything...we certainly don't assess that. I'm not aware of those opportunities where assessors are going out with a tape measure and starting to look for things over two acres...We're mostly using a common sense approach". He went on to advocate "not going after the extra acreage that's there for future expansion."

The only real estate owned by churches which any taxing authority seemed interested in having better defined in law seemed to be off-site property which Mr. Ternes described as "owned by a religious corporation or church (that) aren't being used for the religious purpose but are actually available for rent."

There are further concerns with the letter you wrote to the church in question. Among them are the fact that, even if the law were to be misinterpreted as you've represented, your application of it would reach much farther than any possible conclusion of the letter of the law or the Legislature's intent.

For example, you have stated that you intend to tax the church's parking lot, despite the fact that the law explicitly forbids it, because your definition of "improved parking" is "(concrete or asphalt only)". Not only does this conflict with what I believe the city of West Fargo, in other instances, considers improvements on property, it also clearly flies in the face of the law and Legislative intent.

Rep. Patrick Hatlestad, Chairman of the Conference Committee which crafted the final language of HB 1246 stated in the minutes of the Committee's final hearing and in the Legislative history maintained by the North Dakota Legislative Council Library: "any improvements in off street parking does not have to be paved".

Although I am not an attorney, in my nearly 17 years of experience as a legislator, I have watched and participated in many pieces of legislation becoming law and have further observed the deference and weight that courts give to Legislative intent and Legislative history, when interpreting and applying the law. Accordingly, I respectfully submit that your application of HB 1246, as stated in your June 29, 2011 letter to Shiloh Evangelical Free Church, strays far from the letter of the law, the Constitutional principles in play, the Legislature's intent, and the history of application of North Dakota laws on this subject.

I would respectfully suggest that you reconsider your position on this matter and determine not to tax church property in West Fargo.

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7-28-11

Wanda Wilcox, Assessor, West Fargo, ND

Page Four

I am not sure whether your decision to attempt to do so was based merely upon a misreading or misunderstanding of the new statutory language or whether it came from influence, pressure or suggestions from other sources, but I can assure you that Legislators will not tolerate North Dakota communities taxing their churches. Again, I am not an attorney, but as chairman of the Constitutional Revision Committee, I have a fair amount of familiarity with our state Constitution and believe that any legal action on these grounds—perhaps even on the law, as passed—could present real Constitutional problems and may even result in all statutory authority to tax church property of any kind being disallowed by the courts.

Another matter which I believe you should carefully contemplate is that the Constitution, in the same sentence that it prohibits taxing church land, also prohibits taxing school land. It is my understanding that the city of West Fargo does not tax school property, regardless of the nature, use or even profitability of the property. This could, I would think, potentially be seen as a discriminatory, possibly unconstitutional, determination of the taxability of various types of property.

Again, I would respectfully suggest that you revisit and reverse your stated intent to tax church land in the City of West Fargo and would certainly hope that others in the state would exercise similar discretion on such an important matter.

Thank you for your attention to this matter.

Sincerely,

Rep. Kim Koppelman
Chairman, Constitutional Revision Committee
Chairman, Administrative Rules Committee
Past Chairman, the Council of State Governments (CSG)

cc: Mayor Rich Mattern, West Fargo
Rep. Wes Belter, Chairman, House Finance and Taxation Committee and co-sponsor, HB 1246
Rep. Patrick Hatlestad, Chairman, House-Senate Conference Committee on HB 1246
Rep. Robin Weisz, Prime Sponsor, HB 1246
Mr. Cory Fong, North Dakota Tax Commissioner
Mr. John Walstad, Chief Code Revisor, North Dakota Legislative Council
Sen. Gary Lee, District 22, West Fargo, ND
Rep. Vonnie Pietsch, District 22, West Fargo, ND
Shiloh Evangelical Free Church, West Fargo, ND

Koppelman, Kim A.

From: Jaspers, Randy <rjaspers@jc.edu>
Sent: Saturday, January 26, 2013 10:52 AM
To: Koppelman, Kim A.
Cc: douglasvan@me.com; tfreier@ndfa.org; roger@goevangel.org

Rep. Koppelman,

Thank you for your note from Jan. 25 inviting me to testify before the House and Finance Taxation Committee meeting on Monday, January 28, regarding HB 1300. As mentioned in a previous email, I am unavailable to testify on Monday because of a funeral, but am open for future meetings. I have read and support HB 1300 (and its proposed changes to current legislation on property tax exemptions for religious organizations). I especially appreciate sections c. and d., which should clear up any confusion. I encourage the committee to recommend that HB 1300 be passed without change.

- 1) Taxing religious organizations discourages them from long-term planning and development, which, in turn hinders community development.
- 2) Religious organizations pay for special assessments on all property. Organizations cannot afford to own large tracts of land that are not used or planned for future use. (In Jamestown we have paid more in special assessments than we did for the original purchase price of the property. One example: we paid for 49% of the cost for one of two streets into the high school in NE Jamestown.)
- 3) Religious organizations serve the public good by helping create stable communities as well as providing multiple resources to help individuals and families, especially the vulnerable, in times of need. The state of North Dakota has consistently recognized this contribution, just as they have for educational institutions, city parks and recreation areas and government agencies, for example.

Please share these comments in your committee hearing, if possible. Also please express my appreciation to the committee members for considering this important legislation.

Blessings!
Dr. Randy Jaspers (cell: 701.320.1222)
Sr. Pastor
Temple Baptist Church
1200 12 Ave. NE
Jamestown, ND 58401
701.952.0822 jamestowntbc.org

Kim,

Thanks for your work on this. I know you and Vern have been in conversation. As he is on vacation, I thought I'd make a few comments, hoping they would be helpful.

On behalf of our congregation in West Fargo, we are grateful that the legislature is considering means by which to preserve the mutually beneficial relationship between places of worship and our community. Like most communities of faith, we take seriously our call to be a positive contributor to our community. Our mission is to bring wholeness to individuals and families. We are glad when our facility is utilized to support community functions, from hosting programs for much needed daycare providers to providing space on our property for the Boy Scouts to set up their Christmas Tree fundraiser.

Like many non-profits, we depend on the generosity of people who appreciate what we do. These are taxpayers who already do their share. We believe that adding a tax burden to faith communities would be a strategy of revenue production that would be very counter productive in terms of the well being of West Fargo and the communities of North Dakota.

We ask that you pass HB 1300 as a means of preserving the healthy and beneficial impact of non-profits and faith communities in North Dakota.

Sincerely,

Rev. Jeff Seaver

Senior Pastor, Triumph Lutheran Brethren Church

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 95-F-05

Date issued: June 21, 1995
Requested by: Charlie Whitman, Bismarck City Attorney

- QUESTION PRESENTED -

Whether the tax exemptions in N.D.C.C. § 57-02-08(7) and (9) for property used for "public worship" or "religious services" unconstitutionally restrict the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious "purposes."

- ATTORNEY GENERAL'S OPINION -

It is my opinion that 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 in N.D.C.C. § 57-02-08(7) and (9) because Article X, Section 5 is self-executing except for the savings provision in the last sentence, which does not apply to that exemption.

- ANALYSIS -

In enacting a statute, it is presumed that the Legislature intended to comply with the North Dakota and United States constitutions, and any doubt must be resolved in favor of the statute's validity. N.D.C.C. § 1-02-38(1); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 357 (N.D. 1945). This presumption is conclusive unless the statute clearly contravenes the state or federal constitution. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987). Furthermore, a statute may be declared unconstitutional only upon the concurrence of four out of five justices of the North Dakota Supreme Court. N.D. Const. art VI, § 4. The opinion of an Attorney General is not binding on the judiciary. Therefore, it has been this office's policy to refrain from calling into question the constitutionality of a statute unless it is clearly and patently unconstitutional.

"All property in this state is subject to taxation unless expressly exempted by law." N.D.C.C. § 57-02-03. Taxpayers

ATTORNEY GENERAL'S OPINION 95-05
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have the burden of proving that their property is exempt from tax. Y.M.C.A. of N.D.S.U. v. Bd. of County Comm'rs, Cass County, 198 N.W.2d 241, 244 (N.D. 1972). Tax exemptions are strictly construed against taxpayers, but courts should liberally construe the term "religious" to fulfill the intent of constitutional and statutory provisions. Lutheran Campus Council v. Bd. of County Comm'rs, Ward County, 174 N.W.2d 362, 365-66 (N.D. 1970).

Your letter specifically concerns property used exclusively for administrative support of religious organizations rather than religious worship services or as a residence for clergy. Article X, Section 5 of the North Dakota Constitution (formerly Article X, Section 176) currently provides in part:

[P]roperty used exclusively for schools, religious, cemetery, charitable, or other public purposes shall be exempt from taxation. . . . Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

(Emphasis added). Similar constitutional exemptions have been interpreted to include property used as the administrative offices of a religious organization, because these offices are property "incidental to and reasonably necessary for the accomplishment" of the organization's religious purposes. Bd. of Trustees of the Kansas E. Conference of the United Methodist Church v. Cogswell, 473 P.2d 1, 11 (Kan. 1970) (quotation omitted); Christian Reformed Church in North America v. City of Grand Rapids, 303 N.W.2d 913, 919 (Mich. Ct. App. 1981). See also 1981 N.D. Op. Att'y Gen. 81-13 at 34 (property must be reasonably necessary for religious purposes). Guided by these interpretations of similar constitutional exemptions, it is my opinion that the administrative offices of a religious organization are property used for religious purposes under Article X, Section 5 of the North Dakota Constitution. Whether the property you describe is so used, and whether that use is exclusive, are questions of fact that the City must determine.

Apparently anticipating this interpretation of Article X, Section 5, you ask whether it conflicts with N.D.C.C. § 57-02-08(7) and (9), which exempt from tax:

All houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected, and any dwellings belonging to religious

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ATTORNEY GENERAL'S OPINION 95-05
June 21, 1995
Page 3

organizations intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of the services of the church, together with the lots upon which the same are situated.

.

All real property . . . owned by any religious corporation or organization, upon which there is a building used for the religious services of the organization, or upon which there is a dwelling . . . used for the residence of the bishop, priest, rector, or other minister in charge of services, must be deemed to be property used exclusively for religious services, and exempt from taxation

All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any of the property, while the property is used for religious purposes, are void.

According to your letter, the administrative offices in this case are not used for public worship services or as a residence for clergy, so the exemption in subsection 7 does not apply. See Christian Church of Ohio v. Limbach, 560 N.E.2d 199, 200 (Ohio 1990) (administrative offices do not facilitate public worship services). Thus, the question remaining under N.D.C.C. § 57-02-08 is whether these offices are "a building used for the religious services of the organization" under subsection 9.

The phrase "religious services" is not defined in N.D.C.C. § 57-02-08. Words and phrases not defined in a statute are to be given their plain and ordinary meaning. N.D.C.C. § 1-02-02. There are several meanings of "service," but when combined with the term "religious," the term could mean either "[a]cts of devotion to God," or "[a] religious rite" or ceremony. The American Heritage Dictionary 1121 (2d. coll. ed. 1991). This phrase must also be "construed according to the context" of the statute. N.D.C.C. § 1-02-03. As used in subsection 9, the phrase "religious services" refers not to a private act of devotion, but to a religious event presided over by a member of the clergy or other minister and attended by people who may use a parking lot.

Statutes should be construed to give meaning to every part,

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June 21, 1995
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and as this office has noted, there is "a great similarity between" subsections 7 and 9. 1970 Op. Att'y Gen. 394, 398. Nevertheless, when viewed in context, the meaning of "religious services" is reasonably clear. Thus, it is my opinion that the phrase "religious services" is limited to religious "rites" or worship services. This interpretation is consistent with North Dakota Conference Association of Seventh-Day Adventists v. Bd. of County Comm'rs, Stutsman County, 234 N.W.2d 912, 916 (N.D. 1975), in which exempt property was used as residences for ordained ministers who presided over religious worship services in area congregations.

Although subsection 9 does not directly exempt from tax all property used for religious purposes, the final sentence in that subsection could be interpreted as doing so indirectly by making any such taxes void. Until 1989, that sentence voided all taxes on "any such property, while the same was so used for religious purposes." See 1989 N.D. Sess. Laws ch. 690, § 1 (emphasis added). This sentence incorporated by reference the property and uses previously discussed in the subsection. The underlined terms were deleted in 1989, but "such" was replaced with "of the," so the sentence continues to apply only to the property and uses described in the subsection.

As your letter and the above analysis illustrate, property can be exempt from tax under Article X, Section 5 of the North Dakota Constitution but not exempt from tax under N.D.C.C. § 57-02-08(7) and (9). Property can also be exempt under these subsections but not Article X, Section 5. See 1981 N.D. Op. Att'y Gen. 81-81. A constitutional provision normally prevails in a conflict with a statute. Article X, Section 5, quoted above, is self-executing except for the savings provision in the last sentence. Lutheran Campus Council, 174 N.W.2d at 367 (Teigen, C.J., concurring specially); 1970 Op. Att'y Gen. at 395. Thus, unless this savings clause applies, property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature. This office has previously reached similar conclusions. See 1994 N.D. Op. Att'y Gen. 94-07 (property used for charitable or public purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08); 1981 N.D. Op. Att'y Gen. 81-13 (excess of two acres used exclusively for religious purposes exempt under Article X, Section 5 but not N.D.C.C. § 57-02-08(9)).

Before the current constitutional exemption for property used exclusively for religious purposes was adopted in 1918, former

Article XI, Section 176 of the North Dakota Constitution provided that "the legislative assembly shall by a general law exempt from taxation property used exclusively for . . . religious . . . purposes." See 1913 N.D. Sess. Laws ch. 130 (emphasis added). The predecessor to N.D.C.C. § 57-02-08(7) in effect in 1918 exempted from tax "all houses used exclusively for public worship and the lots and parts of lots upon which such houses are erected." Compiled Laws of North Dakota of 1913, § 2078; 1907 N.D. Sess. Laws ch. 218, § 1. The predecessor to N.D.C.C. § 57-02-08(9) in effect at the same time provided:

Property used exclusively for religious purposes is exempt from taxation as hereinafter provided. All real property, not exceeding one acre in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling and usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consist of one tract or more. . . .

Compiled Laws of North Dakota of 1913, § 2079 (emphasis added); 1901 N.D. Sess. Laws ch. 160. Thus, as with current law, these statutes in 1918 did not exempt all property used exclusively for religious purposes, but only property used for public worship or religious services that furthered those purposes. Indeed, by incorporating the phrase "religious purposes" at the beginning of the subsection, and then restricting the exemption to property used only for "religious services," the Legislature appears to have purposely restricted the exemption required by the constitution.

Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature. Engstad v. Grand Forks County, 84 N.W. 577, 578 (N.D. 1900). In Engstad, the Legislature had enacted a tax exemption only for property belonging to charitable institutions, but Article XI, Section 176 required the Legislature to exempt from tax all property used for charitable purposes, whether owned by institutions or private persons. The Supreme Court concluded that although the statutory exemption was narrower than mandated by the constitution, it was nevertheless valid. Engstad, 84 N.W. at

579. This decision was limited to property used for charitable purposes. However, the same rationale would have applied to property used for religious purposes. Therefore, although the statutory exemptions were narrower than mandated by the constitution, it appears that property used for religious purposes but not public worship or religious services was not exempt from tax when the current constitutional exemption was adopted in 1918. As a result, if the savings clause applied to the 1918 amendment, such property would remain nonexempt today unless otherwise provided by law.

This savings clause "freezes the exemptions and property subject to tax as they existed upon the adoption of the amended version of [former] § 176 until the Legislature provides for other methods of taxation of exemptions." 1970 N.D. Op. Att'y Gen. at 395. This provision was first added to the constitution in 1914 and retained when the current exemption was added to former Article XI, Section 176 in 1918 by initiated measure. See 1919 N.D. Sess. Laws ch. 90; 1913 N.D. Sess. Laws ch. 103. Although this savings provision was retained by the 1918 amendment, its text refers to the changes caused by "this amendment," which would continue to be the 1914 amendment. It is therefore my opinion that the savings clause in Article X, Section 5 of the North Dakota Constitution does not apply to the amendments adopted in 1918, which would include the current exemption for property used exclusively for religious purposes.

This conclusion is supported by the changes made to this section by the 1918 amendment. With overstrikes through the deleted text and the new text underlined, former Article XI, Section 176 as amended in 1918 provided:

Taxes shall be uniform upon the same class of property, including franchises within the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only, but the The legislature may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. The property of the United States, and of the state, county and municipal corporations, shall be exempt from taxation, and the legislative assembly shall by a general law exempt from taxation property used exclusively for schools,

ATTORNEY GENERAL'S OPINION 95-05

June 21, 1995

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religious, cemetery, charitable or other public purposes, ~~and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; provided, shall be exempt from taxation. Except as restricted by this article, the legislature may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force, in the same manner and to the same extent,~~ until otherwise provided by statute.

Compare 1919 N.D. Sess. Laws ch. 90 with 1913 N.D. Sess. Laws ch. 103.

Because this amendment was adopted as an initiated measure, there is no legislative history that can be used to determine its purpose. However, as seen from the language deleted and added by the amendment, it made three substantive changes. First, it authorized the Legislature to exempt personal property from taxation. Second, it affirmed the general authority of the Legislature to raise revenue and fix the location of property. Finally, and most important for the question you ask, this amendment made the exemptions in that section self-executing rather than a mandate to the Legislature, effectively overruling the Supreme Court's decision in Engstad which had been affirmed just two years earlier in State ex rel Linde v. Packard, 160 N.W. 150, 156 (N.D. 1916).

The clear purpose of making these exemptions self-executing was to remove the discretion of the Legislature under Engstad to restrict exemptions that are only mandated by the constitution. It would defeat this purpose to conclude that the amendment's deliberate removal of the Legislature's discretion was ineffective under the savings provision unless the Legislature "otherwise provided by statute." The only way to give effect to this change is to follow the plain meaning of the savings provision and conclude that it only applies to the 1914 amendment.

In summary, Article X, Section 5 of the North Dakota Constitution is self-executing except for the savings provision in the last sentence, which does not apply to the exemption in that section for property used exclusively for religious purposes. Therefore, because this exemption is effective regardless of statutory authority, subsections (7) and (9) of N.D.C.C. § 57-02-08 supplement rather than restrict

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that exemption.

- EFFECT -

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.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: James C. Fleming
Assistant Attorney General

vkk

95-05

#3

Date Issued: February 12, 1981 (AGO 81-13)

Requested by: Charles D. Orvik, Pierce County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether land purchased by a church on which no church structure exists and on which no religious services have been held is eligible for a real estate tax exemption for any part of the year of purchase or any year subsequent thereto in which the conditions remain the same.

II.

Whether a church structure and related improvements constructed on two or less acres of ground entitle the larger remainder of the eight-acre tract owned by the church to be eligible for a real estate tax exemption.

III.

Whether the use by a church of more than two acres of land for religious purposes qualifies the land greater than two acres so used to be entitled for a real estate tax exemption.

IV.

Whether section 57-02-14.1 of the North Dakota Century Code applies to a church property not located within the limits of a city.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that land owned by a church on which no church structure exists, and on which no religious services have been held, does not qualify for a real estate tax exemption during the year of purchase or any subsequent year thereafter when the conditions remain the same.

II.

It is my further opinion that if a church does not use more than two acres of a larger eight-acre tract for religious purposes, then only so much of the larger tract as is used for religious purposes up to two acres shall be eligible for a real estate tax exemption.

III.

p 2 #

It is my further opinion that if a church uses real property in excess of two acres for religious purposes all the land so used even though it is in excess of two acres is eligible for a real estate tax exemption provided that the use of the real property by the church is reasonably necessary and that it is actually used exclusively for religious purposes.

IV.

It is my further opinion that the requirements of section 57-02-14.1, N.D.C.C., do not apply to real property owned by a church not within the limits of a city.

- ANALYSIS -

I.

Section 5 of Article X (formerly Section 176) of the Constitution of the state of North Dakota provides that "property used exclusively for . . . religious . . . purposes shall be exempt from taxation." Section 57-02-08, N.D.C.C., supports the Constitution by creating the statutory exceptions contemplated by the Constitution in subsections 7 and 9 thereof. Subsection 7 exempts "all houses used exclusively for public worship, and lots or parts of lots upon which such buildings are erected. . . ." Subsection 9 exempts "all real property, not exceeding two acres in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization. . . ."

If a tract of land or a portion of it that has no building on it were used exclusively for outdoor religious services, the portion reasonably necessary for those services would be exempt under Section 5 of Article X of the North Dakota Constitution. So long as no religious buildings were constructed on the real property any claim for an exemption from real estate taxes would have to be based on a showing under Section 5 of Article X of the North Dakota Constitution that that part of the tract on which a real estate tax exemption was claimed was used exclusively for religious purposes. That determination is made with reference to the facts on the assessment date of February first of each year established in section 57-02-11(1), N.D.C.C. See *Gaar, Scott & Co. v. Sorum*, 90 N.W. 799 (N.D. 1902), and *United Telephone Mutual Aid Corp. v. State*, 87 N.W.2d. 54 (N.D. 1957).

II.

Subsection 9 of section 57-02-08, N.D.C.C., limits the exemption for land to two acres.

III.

If more than two acres of land are used exclusively for religious purposes, the acreage so used would be exempt under Section 5 of Article X of the Constitution and would not be limited to the two-acre exception created by subsection 9 of section 57-02-08, N.D.C.C. In a conflict between a statute and a provision of the Constitution, the Constitution prevails.

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IV.

Section 57-02-14.1, N.D.C.C., requires the owner of real property within a municipality who claims it is exempt from taxation to annually file with the assessor and county auditor a certificate in which is set out all the facts on which the claim of exemption is based. This statute was enacted in 1967. Section 57-02-14.1, N.D.C.C., applies to real property within a "municipality." It soon became necessary to determine whether "municipality" meant "municipality" as defined in section 40-01-01(1) to mean only a city or whether it meant "municipality" as defined in section 57-02-01(6), N.D.C.C., to mean any political subdivision empowered to levy taxes. Apparently when the 1967 legislative committees considered the bill before it became law, both the committee members and those supporting the bill understood that the annual certificate requirement was intended to apply only to real property within a city; because of that, the tax officials have interpreted it as applying only to real property within a city. That interpretation is a reasonable interpretation and should be continued. Accordingly, real property owned by a church not located within the city limits is not subject to the filing requirements of section 57-02-14.1, N.D.C.C.

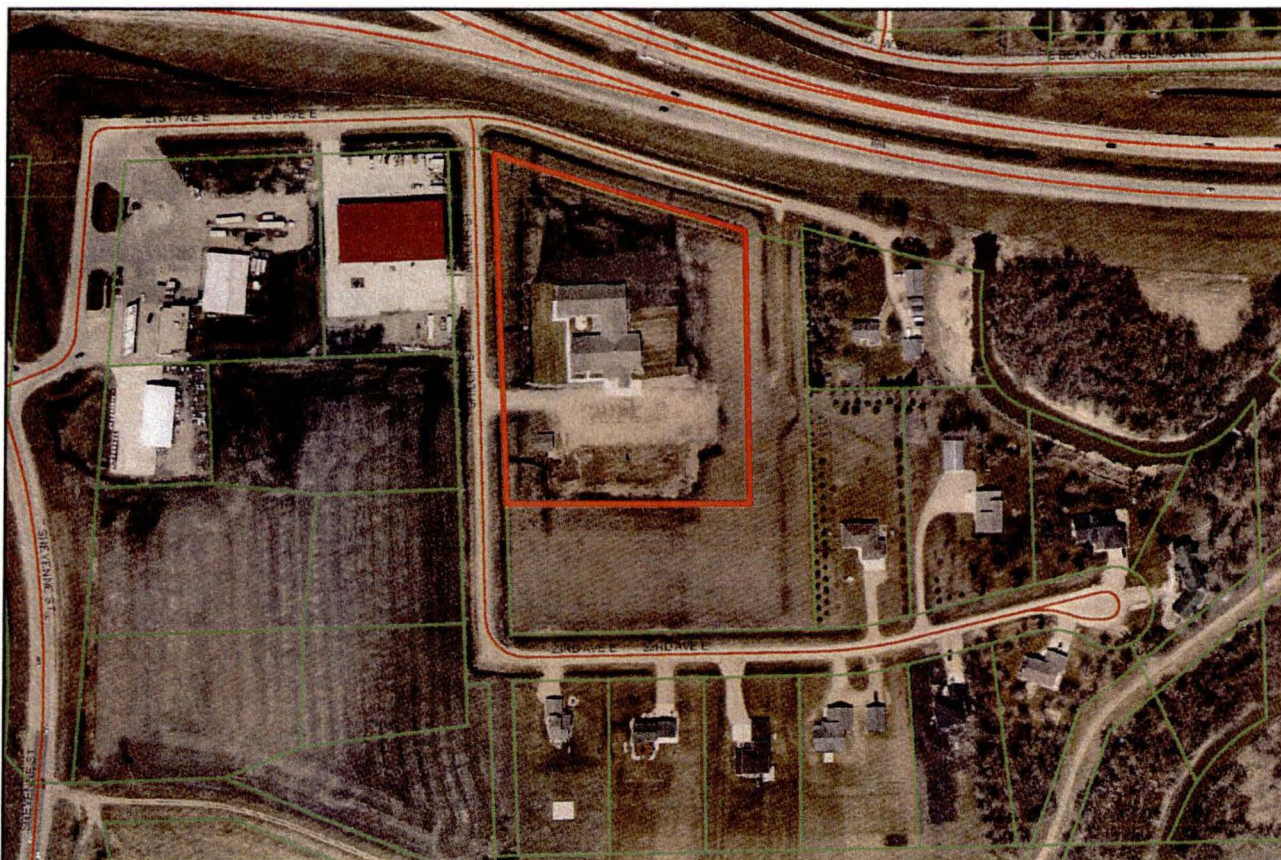
- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

ROBERT O. WEFALD
Attorney General

Prepared By: Kenneth M. Jakes
Assistant Attorney General

#00



Shiloh Perimeter Landscape

Assessment

8/29/2011 9:09:24 AM

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North Dakota Family Alliance

A Trusted Voice Impacting Our Legacy

Tom D. Freier, EXECUTIVE DIRECTOR

#9

House Finance and Taxation Committee

HB 1300

January 28, 2013

Mr. Chairman and members of the House Finance and Taxation Committee, I am Tom Freier with the North Dakota Family Alliance, I am here to share my support for HB 1300.

The bill seeks to restore the North Dakota Century Code to what I believe the Founding Founders as well as the framers of our North Dakota Constitution—put in place.

The practice of not taxing churches has been in existence for centuries, as far back as the Roman Empire. America's First Amendment in the Bill of Rights laid the foundation, putting in place protections as provided by the Establishment and Exercise Clauses. These protections have supported today's practice of affording property tax exemptions for churches in all 50 states.

With the property tax exemption in place, the state recognizes the constitutional protections, the good works for the poor and disadvantaged done by the church, the stability it brings, and its effect on the general well-being of society.

Over the years the property tax exemption has been challenged, but has been upheld on each occasion. The US Supreme Court confirmed this in *McCulloch v. Maryland* (1819) when it stated: "the power to tax involves the power to destroy."

The property owned by a religious organization, normally thought of as the church, used for purposes to further and carry out its mission should not be taxed. If improperly taxed, the state through the tax is in essence destroying the churches ability to carry out its purpose.

Please support HB 1300 by giving it a Do Pass from this committee.

Dedicated To Strengthening Families

3220 18th Street South Ste 8 • Fargo, ND 58104 • Phone: 701-364-0676
www.ndfa.org • admin@ndfa.org

TESTIMONY ON HOUSE BILL 1300

2013

Mr. Chairman and Members of the Committee;

Last session, we passed legislation to protect churches from property taxes. We did this by expanding the definition in law of land mass that it is absolutely forbidden to tax. The result, ironically, is not that churches are being taxed less, but that they are being taxed more! In fact, some are being taxed for the first time ever. This not only violates legislative intent, it is clearly unconstitutional.

Two North Dakota Attorney General's Opinions make it very clear that our Constitution forbids the taxation of church property.

A 1981 Opinion by AG Robert Wefald states, in part:

"If a church uses real property in excess of two acres for religious purposes all the land so used even though it is in excess of two acres is eligible for a real estate tax exemption provided that the use of the real property by the church is reasonably necessary and that it is actually used exclusively for religious purposes."

...and "If more than two acres of land are used exclusively for religious purposes, the acreages so used would be exempt under Section 5 of Article X of the Constitution and would not be limited to the two-acre exception created by subsection 9 of section 57-02-08, N.D.C.C. ***In a conflict between a statute and a provision of the Constitution, the Constitution prevails.***"

(emphasis added)

A later Opinion, in 1995, by AG Heidi Heitkamp reaches concurring conclusions, stating, in part:

"the exemption in Article X, Section 5 of the North Dakota Constitution for property used exclusively for religious purposes by the exemptions in N.D.C.C. 57-02-08 (7) and (9) because Article X, Section 5 is self-executing..."

"...property used exclusively for religious purposes is exempt from tax without an enactment of the Legislature."

"Unlike the current constitutional exemption, former Article XI, Section 176 was not self-executing, but mandated action by the Legislature."

"The clear purpose of making these exemptions self-executing was to remove the discretion of the Legislature under Engstad to restrict exemptions that are only mandated by the constitution."

...and "Therefore, because this exemption is effective regardless of statutory authority, subsections (7) and (9) of N.D.C.C. 57-02-08 supplement rather than restrict that exemption."

The intent and effect of the North Dakota Constitution is clear. Property owned by a church to carry out its religious purposes is nontaxable.

The Legislature does not have the authority to define a "religious purpose", by acreage or any other means. For the Legislature to have such authority would not only fly in the face of this provision of the North Dakota Constitution, but also the bar in the First Amendment of the United States Constitution against the infringement of religious liberty, in my opinion.

I don't believe, however, that this is an authority that the North Dakota Legislature has tried to assert. Instead, my investigation and analysis leads me to believe that our Legislature has placed definitions in law which have included acreage, for example, to prevent eager taxing authorities from violating the Constitution and taxing church property; in other words to clearly define what is absolutely nontaxable, not to imply that property not falling into that description is, in fact, taxable.

The Attorney Generals' Opinions referenced, particularly the latter one, makes this quite clear by asserting that the Constitutional exemption is self-executing. In other words, not only does it not take Legislative action to activate it, but also no action by the Legislature can curtail it.

This alarming new taxation of churches prompted my initial inquiry with the North Dakota Legislative Council. You'll find that the response of the Chief Code Reviser, Mr. John Walstad, indicates similar amazement at how anyone could interpret our expansion of non-taxable land as a license to tax more.

The bottom line, from my study and conversations on this matter, is that I believe that taxing authorities are interpreting the legislation passed last session as a "bright line test". They believe the Legislature has told them to tax up to the point outlined in the law (even though the Legislature expanded the area which was forbidden to be taxed).

The two Attorney General's Opinions I've researched bolster the reading that property owned and occupied by churches for religious purposes is nontaxable. They clearly show that the Constitutional principle trumps any specific definition in statute, which means that taxing authorities can--and, I would submit, MUST--refrain from taxing a larger area which still meets the Constitutional definition.

This, however, is not how North Dakota taxing authorities have apparently responded. Instead, they have descended upon church property with tape measures and aerial photographs to attempt to determine what are they now believe is taxable.

I attempted to resolve this matter by intervening for a church in my district which is being excessively burdened with new taxation. I am furnishing you with the letter I wrote to the local tax assessor, which contains my analysis of the issue. I also made county and state officials aware of the problem. The result, for this church, was an eventual reduction in the amount that was previously threatened to be taxed, but a large property tax assessment, for the first time ever, nonetheless. This burden forced the church to subdivide and sell some of its lot, because it could not afford the taxes.

I am told that there have been discussions with legal experts who are willing to represent North Dakota churches, on this matter. So far, to the best of my knowledge, no lawsuits have ensued, I believe, because those churches are looking to us, in the Legislature, to correct this problem. They should be congratulated for their restraint because, it would appear, if such lawsuits ensued (as they may if we fail to act) that the churches would easily win.

No one wants churches suing communities or our state, least of all the churches, themselves. We must prevent that by doing the right thing, through this legislation.

Churches and their influence in our state and communities are being harmed. Their potential growth is being thwarted by the very communities they exist to benefit. Land purchased for worship and for the growth of churches has been forced to be sold, because congregations can't afford the taxes currently being assessed. Many, already burdened with crippling special assessments (often also arguably unwarranted or excessive) are now, for the first time ever, suffering the additional burden of financially-crippling property taxation!

Churches should not cower in fear of their government. The power to tax is the power to destroy. Destroying churches is certainly not our aim. We should not allow it to be the unintended effect of misinterpretation of our law and Constitution, either.

It's time to ensure that our law clearly matches our Constitution, by removing church property definitions, descriptions, or references to acreage. These provisions have apparently misled taxing authorities into the assumption that they have the authority--or, worse yet, the requirement--to tax church property, despite the freedom from this taxation guaranteed by our Constitution.

Mr. Chairman, Members of the Committee, I don't believe, as a legislator, that I've ever seen a clearer opportunity to uphold my oath of office or to "right a wrong" in our government. Our responsibility, now, is to end this practice, once and for all, to make it crystal clear that the North Dakota Legislature upholds the Constitution, as we've each sworn to do, and to ensure that the religious freedom guaranteed by the founders of our state and nation is upheld.

Mr. Chairman and members of the Committee, I respectfully ask you to give HB 1300 a resounding "Do Pass" recommendation to help accomplish this important purpose. Thank you.

Respectfully Submitted,

Rep. Kim Koppelman

West Fargo, ND -- District 13

Chairman, Judiciary Committee,

Chairman, Administrative Rules Committee

Past Chairman, Constitutional Revision Committee,

Past National Chairman, The Council of State Governments (CSG)



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July 11, 2011

Honorable Kim Koppelman

State Representative

513 First Avenue NW

West Fargo, ND 58078-1101

Dear Representative Koppelman:

In our telephone discussion, you told me you were surprised to learn that a church in your legislative District recently received a notice of property taxes due on property previously treated as exempt under the property tax exemption for church property. You said you remember 2011 House Bill No. 1246 increased, rather than decreased, the amount of land exempt for church use. Your recollection is accurate.

Under North Dakota Century Code Section 57-02-08(9), through tax year 2010, up to two acres of church property was required to be exempt from taxation if either the church or residence of the minister in charge of services is located on the property. As amended by 2011 House Bill No. 1246, the provision now requires that the land under the church and off-street parking and reasonable landscaping or sidewalk area up to a maximum of two additional acres must be exempted from taxation. In addition, if the residence of the minister in charge of services is on property not adjacent to the church, that residence and out buildings and up to two acres of additional land must be exempt from taxation. It does not appear that a church that was not subject to tax on land in 2010 would become subject to tax on land in 2011 unless the church has acquired additional acreage.

We hope this provides useful information. Please let us know if you require further information.

Sincerely,

John Walstad

Code Revisor

Kim,

Thanks for your work on this. I know you and Vern have been in conversation. As he is on vacation, I thought I'd make a few comments, hoping they would be helpful.

On behalf of our congregation in West Fargo, we are grateful that the legislature is considering means by which to preserve the mutually beneficial relationship between places of worship and our community. Like most communities of faith, we take seriously our call to be a positive contributor to our community. Our mission is to bring wholeness to individuals and families. We are glad when our facility is utilized to support community functions, from hosting programs for much needed daycare providers to providing space on our property for the Boy Scouts to set up their Christmas Tree fundraiser.

Like many non-profits, we depend on the generosity of people who appreciate what we do. These are taxpayers who already do their share. We believe that adding a tax burden to faith communities would be a strategy of revenue production that would be very counter productive in terms of the well being of West Fargo and the communities of North Dakota.

We ask that you pass HB 1300 as a means of preserving the healthy and beneficial impact of non-profits and faith communities in North Dakota.

Sincerely,

Rev. Jeff Seaver

Senior Pastor, Triumph Lutheran Brethren Church

March 19, 2013

Senate Finance and Taxation Committee
RE: HB 1300

Thank you for allowing me to testify before your committee on HB 1300 and the proposed changes to the ND Century Code re: property tax exemption for religious organizations. ~~I especially appreciate sections c. and d., which should clear up any confusion.~~ I encourage the committee to recommend that HB 1300 be passed without change.

- 1) Taxing religious organizations discourages them from long-term planning and development, which, in turn hinders community development.
- 2) Religious organizations pay for special assessments on all property. **Organizations cannot afford to own large tracts of land that are not used or planned for future use.** (In Jamestown we have paid more in special assessments than we did for the original purchase price of the property. One example: we paid for 49% of the cost for one of two streets into the high school in NE Jamestown.)
- 3) Religious organizations serve the public good by helping create stable communities as well as providing multiple resources to help individuals and families, especially the vulnerable, in times of need. The state of North Dakota has consistently recognized this contribution, just as they have for educational institutions, city parks and recreation areas and government agencies, for example.

Thank you for allowing me to testify before your committee. I urge you to pass this important piece of legislation.

Blessings!



Dr. Randy Jaspers
Sr. Pastor
Temple Baptist Church
1200 12 Ave. NE
Jamestown, ND 58401
701.952.0822, jamestowntbc.org



Shiloh Perimeter Landscape Assessment

8/29/2011 9:09:24 AM

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

PROPOSED AMENDMENT TO HOUSE BILL NO. 1300

Page 1, line 8, remove overstrike on "~~and if on the same~~"

Page 1, line 9 through 12, remove overstrike

Page 1, line 13, remove overstrike on "~~building, and up to a maximum of~~"

Page 1, line 13, after "of" insert "five"

Page 1, line 13, remove overstrike on "~~additional acres~~"

Page 1, line 13, after "acres" insert "[2.02 hectare]"

Page 1, line 16 through 19, remove overstrike

Renumber accordingly



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1300

That the Senate recede from its amendments as printed on pages 1301 and 1302 of the House Journal and pages 1184 and 1185 of the Senate Journal and that Engrossed House Bill No. 1300 be amended as follows:

Page 1, line 2, remove "an"

Page 1, line 3, replace "effective date" with "for retroactive application"

Page 1, line 7, remove "and land"

Page 1, line 8, remove the overstrike over "~~and if on the same~~"

Page 1, remove the overstrike over lines 9 through 12

Page 1, line 13, remove the overstrike over "~~building, and up to a maximum of~~"

Page 1, line 13, after "~~two~~" insert "five"

Page 1, line 13, remove the overstrike over "~~additional acres~~["

Page 1, line 13, after "~~hectare~~" insert "2.02 hectares"

Page 1, line 13, remove the overstrike over the second closing bracket

Page 1, remove the overstrike over lines 16 through 19

Page 1, line 20, overstrike "services" and insert immediately thereafter "purposes"

Page 1, remove the overstrike over line 22

Page 1, line 23, remove the overstrike over "~~from~~"

Page 1, line 23, remove "person if"

Page 1, line 23, remove "received is used for the religious purposes of the religious"

Page 1, line 24, remove "corporation or organization"

Page 2, line 1, replace "**EFFECTIVE DATE**" with "**RETROACTIVE APPLICATION**"

Renumber accordingly