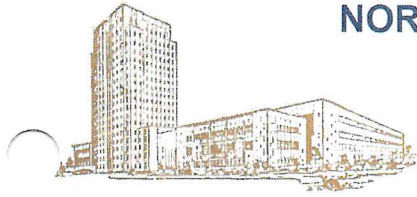


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Speaker of the House

3-23-2021

Testimony in Support of HB 1471

Before the Senate Finance and Taxation Committee

Madam Chair and Members of the Committee;

Several years ago, the Legislature passed a bill which spelled out, by acreage, the amount of land owned by a church, used for its religious purposes, which was forbidden to be taxed. Unfortunately, some who collect taxes have read the law which forbids taxation to actually be permission to tax everything else. This is not what the law says, but it is how it's been interpreted and, as a result, churches in North Dakota have been taxed on some of their property surrounding their church buildings, parking lots, etc.

Not only is this an incorrect interpretation of the law, it is clearly an unconstitutional act and it is incumbent upon the Legislature to clarify the law so that it is clearly in harmony with the North Dakota Constitution.

I am told that, prior to this, taxing authorities simply never thought about taxing churches because it has always been clear that we don't tax church property. That's why our Constitution forbids it. In fact, the same sentence spelling this out in the Constitution forbids the taxation of both school property and of church property which is used for a religious purpose.

While tax collectors apparently have no interest in attempting to tax school land—not only the land upon which school buildings sit, but often land school districts purchase for potential future expansion—they, for some unexplained reason, seem eager to tax as much church property as they think they might be able to justify taxing. Sadly, the way our current law is written has led to their interpretation that they have the authority to tax at least some of what the Constitution forbids. It's time for us to clear that up.

House Bill 1471 clarifies this point and makes it clear that both our statutes and our Constitution say and mean the same thing.

This is not a new problem. After legislation to protect churches from property taxes was passed years ago, it included the definition in law of land mass that it is absolutely forbidden to tax. The result, ironically, is not that churches were 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.

Neither the Legislature, nor taxing authorities 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* by 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 recent taxation of churches prompted my initial inquiry with the North Dakota Legislative Council, now many years ago. The response of the then-Chief Code Reviser, Mr. John Walstad, indicated 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 previously as a "bright line test". They believe the Legislature has told them to tax up to the point outlined in the law rather than that they were absolutely forbidden to tax anything within that description, with the understanding that significant parcels outside that narrow description, if owned by a church and used for religious purposes, would also be nontaxable.

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 some North Dakota taxing authorities have responded. Instead, they have descended upon church property with tape measures and aerial photographs to attempt to determine what they believe is now taxable.

I attempted to resolve this matter by intervening for a church in my district which was being excessively burdened with new taxation. I wrote a letter to the local tax assessor, which contained 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, replat, and sell some of its lot, because it could not afford the taxes. Later, under the burden of property taxes, coupled with crippling special assessments which, of course, churches are also assessed, the church was forced to close and sell its property. Government should not be in the business of shutting down churches by excessive taxation!

I am told that there have been discussions with legal experts who are willing to represent North Dakota churches, on this matter, without charge. So far, to the best of my knowledge, no lawsuits have ensued. This, I believe, is because 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 churches, 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 restrictive 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.

Madam Chair, 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 than this bill affords. Our responsibility, now, is to end this practice, once and for all, to make it crystal clear that the North Dakota Legislature upholds and supports 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.

Madam Chair and members of the Committee, I respectfully ask you to give HB 1471 a resounding "Do Pass" recommendation to help accomplish this important purpose. Thank you.