

CONSTITUTIONAL CONSIDERATIONS RELATING TO LIMITATIONS ON THE AMOUNT OF PROPERTY THAT MAY BE ACQUIRED BY A TAX-EXEMPT ORGANIZATION

The Governor vetoed 1997 Senate Bill No. 2385, which would have prohibited any nonprofit corporation from acquiring more than 16,000 acres of land in North Dakota. The Legislative Assembly did not override the veto. This legislation resulted from recognition of the potential damage to tax bases of political subdivisions when large amounts of property are removed from the tax rolls and the damage to the local economy when agricultural land is removed from production. The Governor stated in his veto message that the issue addressed by the bill is a valid public policy concern. The Governor stated that he had initiated a process to carefully consider this issue, and one of the main objectives of this process is to develop agreement regarding "how much is enough" for entities, such as the Nature Conservancy, North Dakota Wetlands Trust, United States Fish and Wildlife Service, and other organizations. This memorandum was requested to explore existing legal authority regarding the power of states to limit the amount of property that may be acquired by nonprofit organizations.

The 14th Amendment to the United States Constitution provides in part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Courts have held that "the right to acquire, possess and protect property is a 'fundamental right' which shall not be infringed by the state without a showing of a compelling state interest." *Wadsworth v. State*, 911 P.2d 1165 (Mont. 1996). It has also been established by legal precedent that although corporations cannot invoke the "liberty" concept of the 14th Amendment for their own protection because they are not natural persons, they are fully entitled to protection of the due process clause in property rights (16B Am. Jur. 2d, Constitutional Law, § 581).

It is necessary to balance the unfettered right to ownership and use of property against the public interest. Obviously, there are situations in which the interest of the general welfare of the public will outweigh the objectives of an individual in ownership or use of his property. It has been stated:

The constitutionally protected right of property is not unlimited; it is subject to reasonable

restraints and regulations in the public interest by means of the legitimate exercise of the police power. *State v. Johnson*, 265 A.2d 711 (Me. 1970).

Balancing of the right to property and the police power is discussed at 16A C.J.S. Constitutional Law, § 508, which contains the following statements:

Pursuant to the exercise of the police power, the right of private property may be limited, restricted, and impaired so as to promote the general welfare

When the police power is so asserted fairly and impartially, the courts will not substitute their judgment for that of the public officers charged with a duty concerning such matters.

Police power enactments must be reasonable; and a real and substantial or rational nexus must exist between a restraint and a valid exercise of the power. If this is not so, the statute cannot be sustained; and when the police power is asserted to regulate property, the courts will substitute their judgment for that of the public officers charged with a duty concerning such matters only when it clearly appears that their actions have no just foundation in reason or necessity.

The Legislature may not, under the guise of the police power, arbitrarily interfere with private property, or impose unusual or unnecessary regulations on it.

In a challenge to the North Dakota corporate farming law, the United States Supreme Court upheld the authority of North Dakota to exclude corporations from ownership of farm property. The United States Supreme Court said "the Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it." *Asbury Hospital v. Cass County*, 90 L. Ed. 6, 326 U.S. 207 (1945).

Although no discussion of the due process clause was included, the United States Supreme Court upheld an Act of Congress prohibiting religious and charitable corporations from acquiring or holding real estate exceeding a specified value in *Church of Jesus Christ of Latter Day Saints v. United States*, 136 U.S. 1, 34 L. Ed. 478, 10 S. Ct. 792 (1890).

In addition to limiting the right of a potential purchaser to acquire property, consideration must be given to the right of a landowner to freely choose the party to whom he wishes to convey property. It has

been held that the owner of property does not have a fundamental right to freely alienate property. *Northwestern Life Insurance Company v. Commodore Cove Improvement District*, 678 F. 2d 24 (5th Cir. 1982).

CONCLUSION

Although there is no court decision on the precise issue of whether a state may limit the acreage of property that may be owned by a nonprofit organization, it appears from existing legal authority that:

1. The due process clause of the 14th Amendment of the United States Constitution protects the right to acquire, possess, and use property.
2. Corporations are entitled to protection of the due process clause in their property rights.
3. The constitutional right of property is not absolute and is subject to restraint under the exercise of the police power.
4. In reviewing exercise of the police power, courts will not substitute their judgment for that of the legislature unless it clearly appears that the actions of the legislature have no just foundation in reason or necessity.
5. The legislature may not, under the guise of the police power, arbitrarily interfere with private property or impose unusual or unnecessary regulations on it.