

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER  
BEFORE THE  
TAXATION COMMITTEE  
SEPTEMBER 11, 2012**

Chairman Hogue, members of the Taxation Committee, I am Marcy Dickerson, State Supervisor of Assessments and Director of the Property Tax Division for the Office of State Tax Commissioner. I am here today to talk about existing provisions in the North Dakota Constitution and Century Code for exemption of property of religious and charitable organizations.

Article X, § 5 of the North Dakota Constitution states, in part, "... property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation." "Other public purposes" are not defined but have been broadly interpreted to include activities that would have to be provided, or would be beneficial if provided, by a governmental entity, if not provided by the applicant claiming exemption. The controlling language in § 5 is the words "used exclusively". Property that is used in part, but not exclusively, for schools, religious, cemetery, charitable or other public purposes, does not qualify for the Constitutional exemption, but may qualify for statutory exemption under a subsection of N.D.C.C. § 57-02-08. There is no ownership test for the Constitutional exemption.

The majority of charitable exemptions are granted under subsection 8 of § 57-02-08. Subsection 8 includes:

"All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions and not leased or otherwise used with a view to profit.

"a. The exemption provided by this subsection includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.

"b. For purposes of this subsection and section 5 of article X of the Constitution of North Dakota, property is not used wholly or in part for public charity or charitable or other public

purposes if that property is residential rental units leased to tenants based on income levels that enable the owner to receive a federal low-income housing income tax credit.”

The term “belonging to” has been defined to mean “owned by”. The property must be owned by a qualifying organization and must not be leased or otherwise used with a view to profit. The property must actually be used in carrying out the charitable purposes of the organization claiming the exemption. Charity has been broadly defined by the courts. If a property is used partly for charitable purposes of the public charity owner of the building and partly for other uses, the dominant use determines the use of the property. If it can be shown that parts of the property are used exclusively for charitable purposes, the assessment may be prorated.

The attached testimony of State Supervisor of Assessments Barry Hasti before the Finance and Taxation Committee on February 13, 1992, includes examples from Attorney General’s Opinions, letters from the Tax Commissioner’s Legal Counsel, and North Dakota Supreme Court cases. Though written over 20 years ago, this document is still a useful guide to understanding charitable property tax exemptions.

Unless you want me to read Mr. Hasti’s report to you, that concludes my prepared testimony. I will try to answer any questions.

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Testimony of Barry Hasti  
State Supervisor of Assessments  
Office of State Tax Commissioner  
February 13, 1992

Mr. Chairman and members of the Interim Committee of Finance and Taxation, my name is Barry Hasti. I am the State Supervisor of Assessments and Director of the Property Tax Division of the Office of State Tax Commissioner.

Legislative Council Staff asked me to provide the committee a review of the application of the public charity property tax exemption provided by North Dakota Century Code §57-02-08(8). To explain how this exemption is administered, it will be helpful to examine the subsection one part at a time.

"57-02-08. Property exempt from taxation. All property described in this section to the extent herein limited shall be exempt from taxation:

8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions,

"Belonging to" means that the buildings have to be owned by institutions of public charity to be eligible for the exemption,<sup>1</sup> ownership by an individual does not qualify as an institution.<sup>2</sup> Merely being a nonprofit corporation does not make an organization an "institution of public charity". The attorney general found that a nonprofit rural housing corporation "use[s] the property for rental and charges a fee. The fact that a lower rental fee is established for certain age brackets with a limited

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<sup>1</sup>Letter from the Attorney General to the Grand Forks City Attorney, March 7, 1988.

<sup>2</sup>Letter from Tax Department Counsel to the Minot City Assessor, February 28, 1966, citing Engstad v. Grand Forks County 84 N.W. 577 (N.D. 1900).

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income and a higher fee for those who are not in the age bracket with a limited income, is indicative of not using the property for charitable purposes."<sup>3</sup>

**Examples:**

- A senior citizens club is a charitable institution.<sup>4</sup>
- A non-profit scholarship foundation which promotes and provides for educational opportunities for North Dakota residents who wish to study engineering or science in North Dakota is a public charity.<sup>5</sup>
- Private institutions, if operated for public charity, are entitled to the exemption,<sup>6</sup> whether or not they are incorporated.<sup>7</sup>
- Non-profit historical societies operated for the public generally are recognized as charitable institutions within the meaning of tax exemption statutes.<sup>8</sup>

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<sup>3</sup>1972 ND Op. Atty Gen'l 392.

<sup>4</sup>Memorandum from the Tax Department Legal Counsel to the State Supervisor of Assessments, March 15, 1978.

<sup>5</sup>Letter from the Tax Commissioner Counsel to The North Dakota Foundation for Engineering and Science Scholarships, May 25, 1956.

<sup>6</sup>Letter from the Tax Commissioner Assistant Counsel to the Grant County State's Attorney, March 17, 1960.

<sup>7</sup>Letter the Special Assistant Attorney General, State Tax Department to the City City Attorney, Valley City, June 5, 1961.

<sup>8</sup>Letter from the Tax Department Counsel to the State Tax Department Utilities Director, July 20, 1966.

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- Y.M.C.A. is an institution of public charity.<sup>9 10</sup>
- Blue Cross is not an institution of public charity.<sup>11</sup>

"used wholly or in part for public charity,

The North Dakota Supreme Court provided a summary of charitable use in Riverview Place, Inc. v. Cass County<sup>12</sup> as follows:

"We have also stated that the determination of whether an institution falls within the exemption is, essentially a two step process in which it must be determined 'whether the organization claiming the exemption is in fact a charitable one, and whether the property on which the exemption is being devoted to charitable purposes.' [Cites omitted.] The ownership of the property in question by an institution of public charity does not, by that fact alone, exempt the property from taxation. [Cites omitted.] Additionally, '[t]he mere fact that the services performed by a charitable corporation also are rendered by profit-making organizations [does] not of itself preclude [a charitable organization's] right to tax exemption.' [Cites omitted.] Rather, '[i]t is the use made of the property which determines whether the property is exempt from taxation.' [Emphasis added.] Id.

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<sup>9</sup>Letter from the Special Assistant Attorney General, State Tax Department to the Fargo City Assessor, May 1, 1958.

<sup>10</sup>Letter from the Special Assistant Attorney General, Office of State Tax Commissioner to the Grand Forks Assistant City Attorney, March 24, 1970.

<sup>11</sup>Letter from the Tax Commissioner Counsel to Nelles, Oehlert & Nilles, October 4, 1956.

<sup>12</sup>Riverview Place, Inc. v. Cass County 448 N.W. 2d 635, 640 (N.D. 1989)

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The property's use must be devoted to charitable purposes, and it must actually be used in carrying out the charitable purposes of the organization claiming the exemption. [Cites omitted.]"

Charity has been defined broadly by the courts to include "a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons . . . by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."<sup>13</sup> Also, "Charity is broadly defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."<sup>14</sup>

If a property is used partly for the charitable purposes of the public charity owner of the building and partly for other uses, the dominant use determines the use of the property.<sup>15</sup> The assessment may be prorated if it can be shown that parts of the property are used exclusively for charitable purposes.<sup>16</sup>

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<sup>13</sup>Am. Water Works Association v. Board of Assessors App., 563 P.2d 359 (Colo. Ct. of App. 1976, cert.den. 1977) at page 362.

<sup>14</sup>Rio Vista Non-Profit Housing Corporation v. Ramsey County, 277 N.W. 2d 187 (Minn. 1979) citing In re Junior Achievement of Greater Minneapolis v. State, 271 Minn. 385, 390, 135 N.W.2d 881, 885 (Minn. 1965)

<sup>15</sup>Letter from the Office of State Tax Commissioner Chief Counsel to the Grand Forks State's Attorney, May 11, 1979.

<sup>16</sup>1978 ND Op. Atty Gen'l 127

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The area of a public hospital leased to University of North Dakota for a Family Practice Center is a part of the teaching hospital's charitable use.<sup>17</sup>

A parking lot owned by a public hospital and used for free parking by employees and hospital visitors is exempt as a necessary part of a modern urban hospital.<sup>18</sup>

That part of a public hospital leased to a private clinic, operating for profit, is not exempt because it does not have a use which directly assists the public hospital in achieving its charitable purpose.<sup>19</sup>

**Examples:**

- A residence owned and used by a public hospital as a residence for a chaplain is not used for charitable purposes.<sup>20</sup>
- "Public hospital" may include housing for resident doctors, even though the doctor's family also lives there, provided it is reasonably necessary for the efficient operation of the hospital.<sup>21</sup>

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<sup>17</sup>1976 ND Op. Atty Gen'l 183.

<sup>18</sup>1978 ND Op. Atty Gen'l 127.

<sup>19</sup>1978 ND Op. Atty Gen'l 127.

<sup>20</sup>Letter from the State Tax Commissioner Counsel to the Minot City Auditor, September 22, 1970.

<sup>21</sup>Letter from the Special Assistant Attorney General, State Tax Department to the Fargo City Assessor, February 4, 1958.

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"together with the land actually occupied by such institutions not leased or otherwise used with a view to profit,

The North Dakota Supreme Court made the following observations in the Riverview Place opinion:

"Moreover, we have noted that when a charitable organization charges a fee for its services and operates at a small net profit which is reinvested back into the organization's charitable operations, those facts do not automatically disqualify the entity's property from an exemption on the basis that it was operated 'with a view to profit,' as the concept of charity encompasses 'something more than mere almsgiving' and therefore a 'benevolent association is not required to use only red ink in keeping its books and ledgers.' [Cites omitted.]"<sup>22</sup>

Only the amount of land that is reasonably required for a site for the buildings and improvements is eligible for exemption, excess land used to pasture cattle is "used for profit".<sup>23</sup> The meaning commonly given to "not used with a view to profit" is that no individual stockholder or investor will receive any kind of profit or gain or dividend from the operation of the charity; it does not mean that the charity cannot make some type of charge for certain services.<sup>24</sup>

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<sup>22</sup>Riverview Place, Inc. v. Cass County *ibid.*

<sup>23</sup>1929 ND Op. Atty Gen'l 162.

<sup>24</sup>Letter from the Tax Department Counsel to the Minot City Assessor, February 28, 1966.



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**Examples:**

- The occasional use of property owned by a public charity for rental purposes does not destroy the tax exempt status of the property.<sup>25</sup>
- Where a public charity leases a building to another institution of public charity at rent substantially below market rental rates so as to constitute financial assistance to the lessee charitable organization, then a charitable use by the lessor can be established.<sup>26</sup>
- A used clothing store operated by a public charity is not exempt because it is used for profit rather than the charitable uses of the charitable institution.<sup>27</sup>
- Vacant lots owned by institutions of public charity are not exempt because they are not "actually occupied" by the institution<sup>28</sup> or public hospital.<sup>29</sup>

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<sup>25</sup>Letter from the Special Assistant Attorney General, Office of the North Dakota State Tax Commissioner to the Grand Forks Assistant City Attorney, March 24, 1970.

<sup>26</sup>Letter from the State Supervisor of Assessments to Central NoDak Development Corporation, July 24, 1989, citing United Way v. Douglas Cty. Bd. of Equal. 337 N.W.2d 103 at 106-107 (Neb. 1983)

<sup>27</sup>Letter from the Special Assistant Attorney General to the Senior Appraiser, Office of Grand Forks City Assessor, March 14, 1975.

<sup>28</sup>Letter from the Special Assistant Attorney General for the Tax Department to the Tax Commissioner, October 30, 1957.

<sup>29</sup>Letter from the Tax Commissioner Legal Counsel to the Bismarck City Assessor, April 10, 1968.

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"and this includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner."

This part of the exemption was added by the 1977 Session of the Legislature<sup>30</sup> to address a particular situation where a hospital provided housing for members of a religious order who donated their time as nurses in the hospital. There has been little or no administrative difficulty with this part of the exemption subsection.

This concludes my testimony, thank you for your attention. If there are any questions, I will happy to respond to them.

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<sup>30</sup>Session Laws of 1977, Chapter 508.