

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-07

Date issued: March 10, 1994
Requested by: Sarah Vogel, Commissioner of Agriculture

- QUESTIONS PRESENTED -

I.

Whether farmland or ranchland obtained by a nonprofit organization, defined in N.D.C.C. ? 10-06.1-10, for the purpose of conserving natural areas and habitats for biota, qualifies for a tax exempt status.

II.

Whether the procedures contained in N.D.C.C. ? 10-06.1-10(3) apply to farmland or ranchland gifted to nonprofit organizations for the purpose of conserving natural areas and habitat for biota as addressed in N.D.C.C. ? 10-06.1-10.

III.

Whether the hearing process set forth in N.D.C.C. ? 10-06.1-10 applies to land which is being transferred between two nonprofit organizations as defined by that statute.

IV.

Whether N.D.C.C. ? 10-06.1-10(3) is applicable to property which was purchased by a nonprofit organization for purposes of conserving natural areas and habitats for biota without first going through the hearing process and receiving approval from the Governor.

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I.

It is my opinion that the question of whether farmland or ranchland obtained by a nonprofit organization for the purpose of conserving natural areas and habitats is exempt from property tax is a question which is necessarily dependent on

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the unique set of facts and circumstances surrounding a nonprofit organization and its attendant use of the land.

II.

It is my further opinion that a nonprofit organization that is gifted farmland or ranchland has not purchased that land and therefore is not subject to the requirements of N.D.C.C. ? 10-06.1-10(3).

III.

It is my further opinion that the hearing process set forth in N.D.C.C. ? 10-06.1-10 applies to farmland or ranchland that is transferred between two nonprofit organizations.

IV.

It is my further opinion that a nonprofit organization that has purchased farmland or ranchland for purposes of conserving natural areas and habitats for biota may not after the fact seek approval for the purchase under N.D.C.C. ? 10-06.1-10(3), to avoid possible divestiture under N.D.C.C. ? 10-06.1-24.

- ANALYSES -

I.

Article X, Section 5, of the North Dakota Constitution provides, in relevant part:

Section 5. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly 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, to the extent immunity from taxation has not been waived by any act of Congress, property of the state, county, and municipal corporations, to the extent immunity from taxation has not been waived by any act of the legislative assembly, and property used exclusively

for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation.

(Emphasis supplied.)¹

In conjunction with this constitutional provision, the Legislature has enacted a number of statutory exemptions. See, e.g., N.D.C.C. ? 57-02-08. However, none of these provisions would appear to be directly applicable with regard to a nonprofit organization's ownership of property for conservation purposes.² Thus, to claim an exemption from property tax, a nonprofit organization acquiring and maintaining farm or ranchland for purposes of conserving natural areas and habitats for biota would need to demonstrate that the land was being used exclusively for a charitable or other public purposes, as required under Article X, Section 5 of the North Dakota Constitution. Unlike under some of the

¹As originally adopted Article X, Section 5, previously Section 176, of the North Dakota Constitution provided in part:

Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the State, county and municipal corporations, both real and personal, shall be exempt from taxation, and the Legislative Assembly shall by general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes. . . .

See Engstad v. Grand Forks County, 84 N.W. 577 (N.D. 1900), for construction.

In 1918, Article X, Section 5, formerly Section 176, was amended to provide: "The property of the United States and of the State, county and municipal corporations and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation." See Lutheran Camp. Coun. v. Board of Co. Com'rs, Ward Co., 174 N.W.2d 362 (N.D. 1970).

²N.D.C.C. ? 57-02-08.4 provides a conditional property tax exemption for owners of wetlands. See also N.D.C.C. ? 57-02-08.5.

statutory exemptions, only property used exclusively for charitable or other public purposes may claim a property tax exemption under this provision.

Charity has been described as any advancement of some social interest. See Black's Law Dictionary p. 296 (4th ed. rev. 1968). Broadly defined, a legal charity is "a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either 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." State v. Packard, 160 N.W. 150, 153 (N.D. 1916) (quotations omitted); see also Rio Vista Non-Profit Housing Corporation v. Ramsey County, 277 N.W.2d 187 (Minn. 1979). The North Dakota Supreme Court has instructed that the terms "charity" or "charitable" should be given a liberal and not a harsh or strained construction in order that a reasonable result be obtained effectuating the true intent of the constitutional and statutory provisions. Lutheran Camp. Coun. v. Board of Co. Com'rs. Ward Co., 174 N.W.2d 362, 366 (N.D. 1970); Riverview Place, Inc. v. Cass County, 448 N.W.2d at 640.

The issue of whether conserving natural areas and habitats for biota constitutes a charitable purpose has not been addressed in North Dakota property tax exempt determinations.³ However,

³However, other states have considered the issue. See generally Moorland Township v. Ravenna Conservation Club, 455 N.W.2d 331, 335 (Mich. App. 1990) (Evidence existed that conservation club qualified for charitable organization exemption for twenty acres used for clubhouse, archery range, rifle range, nature trail and a stream.); Turner v. Trust for Public Land, 445 So.2d 1124, 1126 (Fla. App. 5 Dist. 1984) (Nonprofit corporation qualified for charitable purpose tax exemption for 1,168 acres of wetlands and lowlands.); Nature Conservancy v. Town of Nelson, 221 A.2d 776, 779 (N.H. 1966) (Charity's use of a 400 acre tract did not satisfy requirement of public charitable purpose to qualify for property tax exemption.); Nature Conservancy, Etc. v. Town of Bristol, 385 A.2d 39, 42 (ME 1978) (Because five parcels of land were not used solely for a charitable purpose, it did not qualify for a property tax exemption.); Berks County Bd. of Assessment v. Berks County Conservancy, 517 A.2d 572, 575 (Pa.Cmwlt. 1986)

in my opinion, conserving natural areas and habitats for the benefit of the public, broadly speaking, may constitute a charitable or other public purpose within the meaning of Article X, Section 5 of the North Dakota Constitution. See Santa Catalina v. County of Los Angeles, 178 Cal. Rptr. 708, 716 (App. 1981); Turner v. Trust for Public Land, 445 So.2d 1124, 1126 (Fla. App. 5 Dist. 1984).

However, the mere fact that a charitable organization owns the property in question does not itself exempt the property. Evangelical Luth. G. Sam. Soc. v. Board of City Com'rs, 219 N.W.2d 900, 906 (N.D. 1974). Rather, it is exempt only where the property is exclusively used to carry out the charitable purposes of the organization claiming the exemption. Riverview Place, Inc. v. Cass County, 448 N.W.2d 635, 640 (N.D. 1989). Further, "the burden of establishing that property comes within [a] tax-exemption . . . is upon the person or entity who claims the exemption, and . . . any doubt as to whether the property is used for charitable or benevolent purposes so as to exempt it from taxation must be resolved against the claimant." Riverview Place, Inc. v. Cass County, 448 N.W.2d at 640.

In North Dakota, a nonprofit organization may permanently acquire farmland or rangeland only for the purpose of conserving natural areas and habitats for biota. N.D.C.C. ? 10-06.1-10(2)(a). Ultimately, however, "[e]ach case where a claim for tax exemption is made is a separate cause of action

(Six tracts of land leased to a bird sanctuary, prohibiting trespassing, did not qualify for property tax exemption.); Mohonk Trust v. Board of Assessors of Town of Gardiner, 392 N.E.2d 877, 880 (Ct. of App. N.Y. 1979) (An association's 5,000 acres of wilderness qualified for a property tax exemption because the environment and conservation were charitable purposes.); Santa Catalina Island Conservancy v. County of Los Angeles, 178 Cal.Rptr. 708, 716 and 721 (App. 1981) (Nonprofit organization using 42,000 acres for preservation and conservation purposes qualified for charitable purpose and use exemption.); and Michigan United Conservation Clubs v. Township of Lansing, 378 N.W.2d 737, 742-43 (Mich. 1985) (Substantial evidence supported denial of property tax charitable exemption for nonprofit organization for five acres because the general public did not benefit without restriction.).

and must be decided upon its own facts." Y.M.C.A. of N.D. State Univ. v. Board of County Com'rs, 198 N.W.2d 241, 244 (N.D. 1972). The fact that a nonprofit organization acquires farmland or rangeland and maintains it for purposes of conserving natural areas and habitats for biota under N.D.C.C. § 10-06.1-10 does not ipso facto entitle the property to tax exempt status under Article X, Section 5 of the North Dakota Constitution. Rather, in each case, one must independently consider whether the nonprofit organization is using the land for its charitable or other public purpose within the meaning of Article X, Section 5 and whether the land is exclusively being used to carry out such purposes.

II.

N.D.C.C. § 10-06.1-10 outlines the process applicable to nonprofit organizations when farmland or rangeland is at issue. The statute uses the terms "acquire" and "purchase" within the statute.

10-06.1-10. Acquisition of certain farmland or rangeland by certain nonprofit organizations. A nonprofit organization may acquire farmland or rangeland only in accordance with the following:

1. Unless it is permitted to own farmland or rangeland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:

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- a. The land must be maintained and managed for the purpose of conserving natural area and habitat for biota.
- b. Any agricultural use of the land is in accordance with the management of the land for conservation and agricultural use, and is by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.
- c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.
- d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.

(Emphasis supplied.)

Part 3 of the statute uses the terms "purchased" and "purchase":

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion

Conservancy District, or their designees. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

(Emphasis supplied.)

The term "acquire" has been defined as "[t]o gain by any means, usually by one's own exertions." Black's Law Dictionary p. 41 (4th ed. rev. 1968). In common parlance, the term "purchase" means to "obtain in exchange for money or its equivalent." The American Heritage Dictionary p. 1005 (2nd coll. ed. 1991). However, the term also in a more broad and technical sense refers to the acquisition of real estate by any means other than descent. Black's Law Dictionary p. 1399. The question is what meaning the Legislature intended to attach to the word "purchase."

Generally, words used in statutes are to be understood in their ordinary sense, unless a contrary intention plainly appears. N.D.C.C. ? 1-02-02; Reed v. Hillsboro Pub. Sch. Dist. No. 9, 477 N.W.2d 237 (N.D. 1991). Further, words used in a statute should not be isolated and defined out of context of the statute in which they are used. Balliet v. North Dakota Workmen's Compensation Bureau, 297 N.W.2d 791 (N.D. 1980).

In this case, the term "acquire" is used throughout N.D.C.C. ?? 10-06.1-10 and 10-06.1-11. Only in subsection 3 of section 10-06.1-10 is the term "purchase" used. Throughout the Century Code the Legislature has used the word "acquire" as a broad, inclusive word and the word "purchase" to reference a limited type of acquisition. See, e.g., N.D.C.C. ? 4-22-26 ("to acquire by purchase, exchange, lease, gift"); N.D.C.C. ? 10-24-05 ("[t]o purchase, take, receive, lease, take by gift . . . or otherwise acquire"); N.D.C.C. ? 11-11-14 ("[t]o acquire by lease, purchase, gift, condemnation"); N.D.C.C. ? 23-18.2-10 ("[t]o purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise or otherwise");

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N.D.C.C. ? 40-05-01 ("[t]o acquire by lease, purchase, gift, condemnation, or other lawful means"); N.D.C.C. ? 40-57-03 ("[a]cquire whether by purchase, lease, or gift"). It must be presumed that the Legislature's use of the word "purchase" in the context of N.D.C.C. ? 10-06.1-10(3) was purposeful. Thus, it is my opinion that the term "purchase" in N.D.C.C. ? 10-06.1-10(3) must be construed in its ordinary sense, meaning the transfer of property by one person to another by voluntary act and agreement, founded on valuable consideration.

Therefore, it is my opinion that a nonprofit organization which is gifted or devised land for the specific purpose of conserving natural areas and habitats for biota need not go through the procedures outlined in subsection 3 of N.D.C.C. ? 10-06.1-10, if such nonprofit organization meets the requirements contained in subsection 1 and the land is held in a manner consistent with subsection 2.

III.

As noted above, the term "acquire" is to gain by any means including purchase. The term "purchase" as used in N.D.C.C. ? 10-06.1-10, refers to the acquisition of property by voluntary act and agreement, founded on valuable consideration.

When two nonprofit organizations exchange one parcel of farmland or ranchland for another, valuable consideration is given. Both nonprofit organizations would "purchase" land within the meaning of N.D.C.C. ? 10-06.1-10(3). Accordingly, the hearing process as outlined in N.D.C.C. ? 10-06.1-10(3) must be followed.

IV.

N.D.C.C. ? 10-06.1-10(3) provides:

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

(Emphasis supplied.)

The plain language of this statute indicates that this provision applies only prior to a nonprofit organization's purchasing property for purposes of conserving natural areas and habitats for biota. Nothing in this or any other provision in chapter 10-06.1 provides for avoiding the divestiture requirements of N.D.C.C. ? 10-06.1-24 by seeking approval for a purchase of property after such purchase has already occurred.

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- 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 questions presented are decided by the courts.

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