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DIGEST OF ATTORNEY GENERAL OPINIONS

TAX LEVIES—DURATION OF EXCESS TAX LEVIES

November 3, 1961

Must excess tax levies state the length of time that such levies are to be in effect?

The opinion states: Chapters 57-15 and 57-17 seem to indicate that it is necessary to state the number of years during which such excess levy will be made. The rule which has been adopted by the North Dakota Courts is that tax statutes are construed strictly against the government and in favor of the citizen. See *Goldberg v. Gray*, 70 N.D. 663, 670, 297 N.W. 124; *Great Northern Railway Company v. J. T. Severson*, 76 N.D. 610, 618, 50 N.W. 2d 889; *Standard Oil Co. v. State Tax Commissioner*, 71 N.D. 146, 150. It is our opinion that if the duration is not specified in the levy, it is for one year only.

MICRO-FILMING—REGISTER OF DEEDS

November 6, 1961

May the Register of Deeds use a micro-filming machine in place of conventional recording books in compliance with sec. 47-19 of the N.D. Cent. Code?

The opinion states: Sec. 11-10-19 of the N.D. Cent. Code provides: "Use of Photography In Making County Records.—Whenever the board of county commissioners shall deem it expedient to do so, photography may be used in the making of permanent county records." It is, therefore, our opinion that micro-filming an instrument affecting the title to or possession of real estate fulfills the requirements of recording under chapter 47-19 of the N.D. Cent. Code and that such process also satisfies the definition of recording as contained in *Northwestern Improvement Company v. Norris*, 74 N.W. 2d 497.

FOREIGN CORPORATIONS—CERTIFICATION OF AUTHORITY TO TRANSACT BUSINESS IN NORTH DAKOTA

November 7, 1961

May a foreign corporation submit a bid to construct public roads without first obtaining a certificate of authority from the Secretary of State?

The opinion states: A foreign corporation bidder who has not filed a notice of intention to do business in the state with the Secretary of State prior to the reading of bids is not entitled to have its bid considered. Such a corporation may not execute a contract with the Highway Department unless it has first obtained the prescribed certificate.

TAX—TAX STATUS OF NON-PROFIT AND
CHARITABLE PROPERTIES

November 27, 1961

What portions of properties owned by non-profit and charitable organizations are exempt from real and personal property taxation?

The opinion states: Prior to the 1961 amendment of sec. 57-02-08 (11), the valuation attributable to the part of the property used *primarily* for social or recreational purposes rather than as a place for conduct of the clubs business or ceremonial meetings should be the basis for the tax. Under the rule in *Westland v. Stalnecker*, 76 N.D. 291, 296-297, 35 N.W. 2d 567, 570, the county auditor should assess such club for each year in which any part escaped taxation pursuant to sec. 57-14-01—57-14-07 of the N.D. Cent. Code. The Supreme Court requires strict construction of exemption statutes and places the burden of establishing exemptions upon the claimant. See *North Dakota Society for Crippled Children and Adults v. Murphy*, 94 N.W. 2d 343, 345. In determining tax assessment for 1962 and later years, the amended subsection 11 of section 57-02-08 must be considered. Presently, only that portion of the premises used *exclusively* for meetings and conducting business and ceremonies for the organization will be exempt from taxation. Exclusive use can include an occasional use for non-exempt purpose. In addition, any part of the premises on which alcoholic beverages are *consumed or sold* shall not be exempt if the alcoholic beverages are sold at a profit. Profit is the sale of an item at an amount in excess of its purchase price or cost, regardless of any expenses incurred in, or attributable to the sale of it.

“The acme of judicial distinction means the ability to look a lawyer straight in the eyes for two hours and not hear a damned word he says.”

JOHN MARSHALL—4 Beveridge, *Life of Marshall*
