



1959

Digest of Attorney General Opinions

North Dakota Law Review

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154 Atl. 503 (1931), the Court found several authorities holding that where possession was surrendered to the vendee the interest retained by the vendor constituted personal property for estate tax purposes. *Dodge County v. Burns*, 89 Neb. 534, 131 N.W. 922 (1911); *In re Eilerman's Estate*, 179 Wash. 15, 35 P.2d 763 (1934). Similarly, the Supreme Court of Washington had held that where a vendor owned land outside the State of Washington, an estate tax could be imposed by the State of Washington upon his interest in the land when he died domiciled in Washington. This was on the theory the vendor's interest was personal property and hence taxable by the state of his domicile. *In re Plasterer's Estate*, 49 Wash.2d 339, 301 P.2d 539 (1956).

The Montana Supreme Court ruled in 1957, in a similar case, that the vendor's interest in Montana land subject to a contract for deed was not subject to an inheritance tax levied by the State of Montana where the vendor had become domiciled in California prior to death. *In re Briebach's Estate*, 132 Mont. 437, 318 P.2d 223 (1957). In view of these authorities, and the early adoption by this state of the doctrine of equitable conversion, the Court concluded that the decedent's interest in the land involved in the instant case was intangible personal property not subject to the North Dakota estate tax. While N.D. Rev. Code § 57-3703 (1943) provides that the value of the gross estate of a nonresident decedent shall be determined by including "all real property located within this state," "all tangible personal property having an actual situs in this state," and the decedent's "equitable interest in real estate within this state," the interest of the decedent fell within none of these statutory categories.

DIGEST OF ATTORNEY GENERAL OPINIONS

COUNTIES — IMPLEMENTATION OF GROUP INSURANCE BENEFITS FOR COUNTY OFFICIALS AND COUNTY EMPLOYEES

July 20, 1959

"The county commissioners are authorized and empowered to determine the wages and salaries of its employees and being that a group insurance program is in effect an increase of wages or salary for the employees it would come within the authority granted to county commissioners."

"However, because of the statute regulating the salary and wages

of certain officials we must conclude that such insurance program cannot include county officers whose salaries are set by law."

LABOR AND EMPLOYMENT — RIGHT TO WORK LAW NOT VIOLATED
BY AGENCY SHOP

August 24, 1959

A union agreement commonly known as "agency shop" which provides for charging service fees to non-union members for the benefits they derive from bargaining efforts made by the union in their behalf is not in violation of Section 34-0114 of the 1957 Supplement to the North Dakota Revised Code of 1943 since that section, "does not specifically prohibit the payment of fees or charges to a labor union or organization, but only prohibits agreements which have as a condition to employment membership in a union and prohibits employers from denying employment by reason of membership or non-membership in a union or labor organization."

However, "the charge made to non-union members should be only their pro-rata share of the cost of bargaining and should not be based on the dues and initiation fees charged union members."