

OFFICIAL OPINION NO. 69-73, Tax Exempt Properties

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

August 25, 1969

The Honorable Lloyd Schrag  
State Senator  
Legislative Research Council  
Pierre, South Dakota

OFFICIAL OPINION NO. 69-73

**Tax Exempt Properties**

Dear Senator Schrag:

You have requested my official opinion on the question of tax exempt properties; specifically, which exemptions are provided for by the Constitution of South Dakota and which are statutory in nature.

As noted in the case of **McFarland v. Keenan**, 77 S.D. 39, 43, 84 N.W. 2d 884, the basis of all tax exemptions is the Constitution. ". . . the public policy of South Dakota, as declared by section 6, Article XI of the Constitution and rendered effective by SDC 57.0311 is to exempt from taxation all property owned by (religious societies) . . ." This case had to do with an exemption of a type of property described in SDCL 1967 10-4-9, belonging to any charitable, benevolent or religious society.

In the words of the Constitution:

"The Legislature shall, by general law, exempt from taxation, property used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, property acquired and used exclusively for public highway purposes, and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation."

Concerning these exemptions, our Supreme Court declared in the case of **Wagner Const. Co. v. City of Sioux Falls**, 71 S.D. 587, 27 N.W. 2d 916, 920, and **State ex rel Eveland v. Erickson**, 44 S.D. 63, 182 N.W. 315, 13 ALR 1189:

"Exemptions are based upon the considerations of public policy. Constitutional and statutory provisions are to be given a reasonable, natural and practical construction to effectuate the purpose for which an exemption is created."

Implementing these provisions, the Legislature has enacted the following statutory provisions: SDCL 1967 10-4-8, 10-4-9, 10-4-10, 10-4-13, 10-4-14, 47-29-25, as well as 33-12-21; covering-property acquired for highway purposes, charitable, benevolent and religious society and institutional property, agricultural land of charitable, benevolent and religious societies up to eighty acres, educational institution property, property of agricultural and horticultural societies, cemetery property and any property belonging to any organization of the National Guard.

There is further and broader power vested in our Legislature by the provisions of Article XI, Section 2, of the Constitution which so far as material here provides:

". . . the legislature is empowered to divide all property including moneys and credits as well as physical property into classes and to determine what class or classes of property shall be subject to taxation and what property, if any, shall not be subject to taxation."

As a result of this constitutional change in 1918, the matter of classification and exemption from taxation was left to the Legislature, subject, of course, to reasonableness of classification and uniformity within the class. Under this authority it could determine the class or classes of property to be exempted and such power is in no way limited by Section 6, Article XI, above noted. (**National College of Business v. Pennington County**, 82 S.D. 391, 395, 146 N.W. 2d 731 and **State ex rel Eveland v. Johns**, 43 S.D. 279, 178 N.W.945.)

Outside of the previously noted exemptions, there stand absolute exemptions granted under the Constitution, Article XI, Section 5:

"The property of the United States and of the state, county and municipal corporations, both real and personal . . . is exempt."

This section of our Constitution has been held to be self-executing and without aid of legislation, exempts all property within its terms from taxation by the state or by the political subdivisions of the state in which such property is located. (**City of Yankton v. Madison**, 70 S.D. 627, 20 N.W. 2d 371.)

It is my opinion then, that except for the absolute exemptions from taxation granted by our Constitution to the government and political subdivisions themselves, the Legislature, under Article XI, Section 2, has complete authority to classify property for purposes of taxation and to determine the taxability or exemption of the same.

Respectfully submitted,

Gordon Mydland  
Attorney General