

OFFICIAL OPINION NO. 70-55, Assessment of buildings on leased sites

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

December 18, 1970

Jack T. Klauck
States Attorney, Pennington County
Rapid City, South Dakota 57701

OFFICIAL OPINION NO. 70-55

Assessment of buildings on leased sites

Dear Mr. Klauck:

You have inquired as to whether a structure constructed by a lessee on land owned by the lessor should be assessed as real or personal property. You have stated that in the past it has been the practice of assessors to assess buildings owned by lessees as personal property and if the taxes are not paid on such, it is difficult to collect the same.

SDCL 10-4-2 defines real property for the purpose of taxation as:

... the land itself, whether laid out in town lots or otherwise, and all buildings, structures, and improvements, tress or other fixtures whatsoever kind thereon and that all rights and privileges thereto belonging in or in anywise aspertaining, and all mines, minerals, quarries in and under the same ...

Personal property is defined in SDCL 10-4-6 and generally speaking includes all goods, chattels, moneys, credits, and effects wheresoever they may be.

Long-term lessees or contract purchasers are specifically covered under SDCL 10-4-23 where property is held under a lease for a term of three or more years or a contract for the purchase thereof,

... belonging to the state or any religious, scientific or benevolent society institution, whether incorporated or unincorporated, or to any railroad company or a corporation whose property is not taxed in the same manner as other property ...

which shall be considered for all purposes of taxation as the property of the person so holding the same. This would apply whether or not the property did in fact come under the general definition of 10-4-2, but this related to particular property where the state is involved or banks or railroad corporations who are assessed on their operating property in the state and then only relates to leasehold interests where the term of the lease is in excess of three years. (See 1959-60 AGR 356 and 1957-58 AGR 216)

It should be noted that by definition SDCL 10-4-6 specifically defines improvements upon land, the title to which is vested in any railway company, as personal property. Structures therefore on such land should be assessed to the owner of the structure as personal property, however, as to structures on other than land belonging to railway companies or other corporations whose property is not subject to the same mode of taxation as other property, they should be considered as real property under 10-4-2 and assessed accordingly.

Upon failure of the record owner of the land to pay the taxes thereon, the county would avail itself of the normal collection remedies for the collection of real property taxes with the lessor or lessee resolving the matter between themselves.

Respectfully submitted,

Gordon Mydland
Attorney General