

OFFICIAL OPINION NO. 72-30, Classification and taxation of structures and additions to real property (10-6-35.1)

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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John L. Foley
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Watertown, South Dakota 57201

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Classification and taxation of structures and additions to real property (10-6-35.1)

Dear Mr. Foley:

You have asked my official opinion as to how far the county commissioners may go in qualifying the provisions of SDCL 10-6-35.1 through 10-6-35.3 so far as the classification of application of the formula therein set forth to various types of structures in your county.

SDCL 10-6-35.1 establishes a classification by the Legislature of all structures or additions to existing structures which are added to real property. The following sections provide a discretionary formula for reduced taxation of new structures and additions, to be adopted in whole or in part by the county commissioners of the several counties, providing for a reduced taxable value for each of the first two years following the construction or addition of the property which is classified by the first section.

It is further noted that structures and additions to structures which were not completed before January 1, 1971, may be taken and considered as existing structures for the purpose of application of the formula, should the county commissioners agree to adopt that formula.

You have asked specifically if the county commissioners could set up different value classifications under the statute, such as saying a structure must have a value of \$5,000 or more and also using a date other than January 1, 1971, for structures not yet completed.

By the provisions of Article XI, Sec. 2 of the State Constitution, the Legislature is given power to divide all 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. This constitutional provision specifically gives such power of classification ... to the Legislature, and to no other body. **State ex rel. Eveland v. Johns**, 43 S.D. 379, 178 N.W. 945 (1920). See also 1969-70 AGR 208.

On the question of whether or not the provisions of 10-6-35.1 stating all structures or additions to existing structures is intended to include only those structures which the county commissioners may set a classification on, I would call your attention to the decision of our Supreme Court in the case of **Chicago Milwaukee, St. Paul & Pacific RR Co. v. Gillis**, 80 S.D. 50, 55,118 N.W. 2d 313 (1962), where the Court had occasion to interpret the provisions of SDC 1970 Supp. 57.0334 (10-6-33) relating to the term "all property." Concerning that phrase, the Court said"... a more inclusive term could not have been employed than the 'all property'... "

It would therefore be my opinion that the term "all structures or additions to existing structures" is all inclusive of that particular class of real property and that the county commissioners could not restrict the classifications within the broad overall class, but must adopt the discretionary formula found in 10-6-35.2. Their only power under such section is to vary the percent of taxable value which shall be applied to such property scaling it from 60% down to 25% the first year following construction and from 60% to 50% or any percentage in between for the second year following construction and thereafter the property must be taking at the statutory 60%, as is all other property for tax purposes.

I concur with your opinion that if the county commissioners adopt such a resolution, they must allow the same relief to any structure and may not set classifications and that they must use the date of January 1st as set forth in that statute. .

Respectfully submitted,

Gordon Mydland
Attorney General