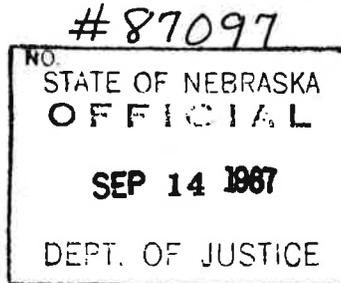


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: September 14, 1987

SUBJECT: Exemption from Documentary Stamp Tax of
Transfers by Wholly-Owned Subsidiaries of National
Banks and Federal Savings and Loans Associations
under Neb.Rev.Stat. §76-902(2) (Reissue 1986).

REQUESTED BY: Donald S. Leuenberger
State Tax Commissioner

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion concerning the taxability for documentary stamp tax purposes of deeds given by wholly-owned subsidiary corporations of national banks and federal savings and loan associations. As you indicate, our office has previously concluded that deeds transferred by or to national banks and federal savings and loan associations fall within the exemption from documentary stamp tax provided to "instrumentalities" of the United States under Neb.Rev.Stat. §76-902(2) (Reissue 1986). Report of Attorney General 1979-80 Opinion No. 187, January 3, 1980, p. 268. Your current question concerns whether, in situations where the exempt institution has transferred property to a wholly-owned subsidiary corporation, the transfer by the subsidiary upon sale to a new owner qualifies for the exemption accorded to the federally chartered lending institution as an instrumentality of the United States.

In construing the meaning of the statutory exemption provided under §76-902(2), certain basic rules of statutory construction should be considered. It is a fundamental principle of statutory construction that, in construing the meaning of a statute, courts will seek to determine legislative intent from the language of the act. Cass Construction Co., Inc. v. Brennan, 222 Neb. 69, 382 N.W.2d 313 (1986). A statute must be construed in light of the object sought to be accomplished, or the purpose to be served, and interpreted in such a manner as to effectuate such object or purpose. Mitchell v. Douglas County, 213 Neb. 355, 329 N.W.2d 112 (1983). Generally, the words of a statute are to be interpreted in light of their plain and ordinary

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meaning. Kellogg Co. v. Herrington, 216 Neb. 138, 343 N.W.2d 326 (1984). Finally, it should be remembered that statutes granting exemption from taxation are to be strictly construed, and the right to exemption must be clearly granted. United Way of the Midlands v. Douglas County Board of Equalization, 215 Neb. 1, 337 N.W.2d 103 (1983).

Applying these principles to interpret the meaning of §76-902(2) in relation to the issue presented herein, we believe the exemption for deeds transferred by or to instrumentalities of the United States (specifically, national banks and federal savings and loan associations) does not apply to transfers of real estate made by wholly-owned subsidiary corporations of such federally chartered financial institutions. It is clear that the Legislature intended the documentary stamp tax imposed under §76-901 to apply to all transfers of real estate not specifically exempted under §76-902. The plain language of the relevant portion of §76-902(2) extends the exemption from documentary stamp tax only to transfers by or to "instrumentalities" of the United States. This term has historically been held to include institutions such as national banks and federally chartered savings and loan associations. First Agricultural National Bank of Berkshire County v. State Tax Commission, 392 U.S. 339 (1968); First National Bank of Homestead, Fla. v. Dickinson, 291 F. Supp. 855 (D. Fla. 1968), aff'd 393 U.S. 407, reh'g denied 393 U.S. 1124; Durnin v. Allentown Federal Savings and Loan Association, 218 F. Supp. 716 (E.D. Pa. 1963); Ochs v. Washington Heights Federal Savings and Loan Association, 17 N.Y.2d 82, 268 N.Y.S.2d 294, 215 N.E.2d 485 (1966). While the plain language of this section provides exemption for transfers by or to such institutions themselves, we do not believe this provision can properly be interpreted to extend such exemption to wholly-owned subsidiary corporations of these institutions.

As we recognized in our previous opinion, the exemption granted under §76-902(2) was enacted at a time when the power of states to tax federal institutions and agencies of this nature was quite restricted, and that "t]he exemption was undoubtedly intended as a safeguard to insure that the state did not overstep its taxing authority insofar as the documentary stamp tax was concerned." Report of Attorney General 1979-80, Opinion No. 187, January 3, 1980, at 269. This concern regarding the state providing an exemption in order to avoid attempting to impose its taxing authority in a manner in which it would infringe upon the immunity from state taxation enjoyed by federal instrumentalities would, in our view, have no application with respect to the tax status of wholly-owned subsidiary corporations of national banks and federally chartered savings and loans association. We conclude a corporation of this nature, being created as a separate entity and enjoying the benefits of a corporate existence in

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its own right, should not be accorded the exemption granted to federally chartered financial institutions as instrumentalities of the United States under §76-902(2). The subsidiary corporation should be considered a separate and distinct entity, and transfers of real estate made by such corporation should be subject to imposition of the documentary stamp tax.

While we have found no case law directly addressing the precise issue presented, we believe the case of Arizona State Tax Commission v. First Bank Building Corp., 5 Ariz. App. 594, 429 P.2d 481 (1967) [First Bank] is reasonably analogous, and supports our conclusion. First Bank involved an action by a subsidiary of a national bank to recover transaction privilege and educational excise taxes paid by the corporation under protest. The plaintiff contended that, as a wholly-owned subsidiary of a national banking institution, it was entitled to the same immunity from taxation accorded to national banks, and thus was exempt from payment of the taxes at issue. In rejecting this claim of immunity, the court stated:

[P]laintiff having been created as a separate entity enjoying the benefits of a corporate existence including, among others, real estate holding and tax advantages, and although performing functions of importance as a subsidiary of a national bank, the taxing by the commission of the business in which it is engaged herein is not such as to impair the operation of said bank as to make it exempt from state taxation .

. . .

Id. at _____, 429 P.2d at 486.

Therefore, on the basis of the foregoing, it is our conclusion that transfers of real estate by wholly-owned subsidiary corporations of national banks or federally chartered savings and loan associations are not entitled to exemption from documentary stamp tax under Neb.Rev.Stat. §76-902(2) (Reissue 1986).

Very truly yours,

ROBERT M. SPIRE
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APPROVED:



Attorney General