

**OPINION
70-493**

April 6, 1970 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County Court House

RE: Taxation - Tax Deed - Effect on Special Assessments

This is in response to your letter of March 26, 1970, wherein you make inquiry regarding a letter sent from this office dated February 13, 1970, addressed to Mr. Glenn Dill, Assistant State's Attorney, Minot, North Dakota, and request that this office supply Mr. Dill with an official opinion which encompasses the material set forth in such letter.

Accordingly, our response to your inquiry of March 26, 1970, will constitute an official opinion of this office and be designated as such. Your initial inquiry was made regarding the position of this office concerning an opinion issued by this office on December 7, 1967, as it relates to special assessment lien subsequent to county tax sale. You submitted the following in your letter:

"On the seventh day of December, 1967, I received an opinion from you regarding whether a county deed on a private sale had the effect of cancelling special assessments certified prior to sale by the city to the county auditor.

"Your answer stated that since section 57-28-21 had not been amended at the time the preservation of liens statutes were enacted, it was not possible to be sure which controlled the situation.

"The 1969 session of the legislature did amend that section. The change made is the additional statement that the special assessments already certified or to be certified, but which are not yet due shall not be cancelled or removed from the records.

"As I read it, the statute always had said and still does say that those installments of special assessments certified or to be certified and already due shall be cancelled and removed from the record.

"Sections 57-27-05, 57-28-05, 57-28-07, 57-28-08, 57-28-09 and 57-28-10, all passed in 1961, appear to be trying to make some sort of distinction between the various states of age of special assessments. If not, there would be no reason to make a distinction between 'certified, to be certified, or which may become due.' Section 57-28-21 makes a quite obvious distinction and was passed in 1969.

"Our county auditor has taken the position that the already due special assessments are cancelled on deeds issued subsequent to

July 1, 1969. I find this untenable for the reason that the statute on which she depends is precisely the same insofar as it applies to back special assessments as it has been for some years.

"The question is then threefold. 1. Was the law so changed that back special assessments are now cancelled (i.e., for sales made after July 1). 2. Is the law the same so that: A. the back special assessments never have been and are not now cancelled or B. the back specials now are and always were cancelled? 3. Depending on your answer, what mention, if any, should be made on the deed issued by the county at private sale, regarding a lien for special assessments?

"I have also been asked to inquire regarding whether under Section 57-28-19 a municipal government has a prior right to purchase ahead of the former owner for only thirty days or at any point after the date of annual sale?"

Initially we would deem it significant to review the ruling set forth in our opinion of December 7, 1967, as follows:

"* * * We cannot attempt to anticipate the various combinations that might result but we feel that a general disposition of the basic questions is about all that can be accomplished at this time.

"On the basis it is our opinion that where the tax deed conforms substantially to the statutory provisions in effect at the time the deed was issued, the deed is entitled to be filed even though the special assessments have not been paid. In this respect those provisions of Section 11-18-02 that are in irreconcilable conflict with the statutory form of tax deed are deemed repealed by implication.

"On the basis of the foregoing, which we are compelled to take into consideration, we deem it advisable to issue our opinion to the effect that liens for unpaid special assessments are not cancelled upon the issuance of a tax deed by the county. In so concluding we are aware that certain property embraced with sizeable liens for taxes and special assessments will not be attractive to potential purchasers. * * *." (emphasis supplied)

It is to be noted that the foregoing ruling was made without reference to special assessments which have been certified and are already due and those special assessments which are "certified or to be certified to the county auditor which had not become due at the date of such sale." (emphasis supplied) While it is true that by implications such ruling covers all unpaid special assessments, we would note that this ruling was made upon the basis of the rule of law which frowns upon repeal by implication and that the opinion was issued upon that rule and to avoid the possible title clouds which could conceivably arise creating a multiplicity of costly lawsuits should the courts hold contrary to such ruling.

Referring to the statute in question, section 57-28-21 of the North

Dakota Century Code, as it existed prior to the 1969 amendment, we note that the same provides, in part:

"* * * and special assessments remaining of record against the premises sold at the date of such sale. * * *." (emphasis supplied)

Accordingly, such statutory statement does not qualify the installments or special assessments which have or have not yet become due nor which have been or have not yet been certified to the county auditor. In absence of such qualification, it seems imperative to interpret such statutory statement as referring to "all" special assessments remaining of record against the premises sold, at the date of such sale, whether or not such or any installments were due or not due on such date. This feature of the prior context of said section 57-28-21 was the basis for the irreconcilable nature of same to other provisions referred to in the opinion and to which you make reference in your letter of inquiry. We continue to maintain that position with regard to the prior context of that statute.

Under the context of section 57-28-21 of the North Dakota Century Code, as amended, we note that a qualification is afforded by the additional statement to which you have referred in your letter, i.e., "* * * installments of special assessments certified or to be certified to the county auditor which had not become due at the date of such sale." This amendment makes the statute in question reconcilable with other sections referred to in your letter and as such it would appear that special assessments remaining of record against the premises sold at the date of sale, except those installments of special assessments certified or to be certified to the county auditor which had not become due at the date of such sale, would be cancelled accordingly.

With regard to your first question, "Was the law so changed that back special assessments are now cancelled (i.e., for sales made after July 1)", it would appear that the amendment to the statute merely clarified by qualification the extent of cancellation of special assessments, making the same reconcilable with the 1961 amendments as set forth in chapter 351 of the 1961 Session Laws. Since the 1961 laws stated the qualification of cancellation with respect to the age of such special assessments whereby the cancellation was effective only as to past due installments, it would appear that there exists and previously existed no contradiction between such statutes and section 57-28-21 as it existed prior to the 1969 amendment. Insofar as no contradiction existed, it is our opinion that the cancellation applied to installments of special assessments which were past due at the date of sale under the previous context of section 57-28-21, but that such cancellation remained inapplicable to any other special assessments which conceivably could have been included in the previous wording of section 57-28-21, and this office declined to rule that the 1961 amendments to other mentioned statutes repealed by implication that portion of section 57-28-21 which was irreconcilable with such amendments. In direct reply to your first question, we are of the opinion that the change in the law did not materially change the cancellation of back special assessments and that such installments on special assessments were cancellable prior to the 1969 amendment, limited, however, to the installment of special

assessments which were past due at the date of sale.

With regard to your second question, "Is the law the same so that: A. the back special assessments never have been and are not now cancelled or B. the back specials now are and always were cancelled?", it would appear that our holding in reply to your first question would answer question number two, i.e., that the back installments of special assessments are now and always were subject to cancellation.

With regard to your third question, "Depending on your answer, what mention, if any, should be made on the deed issued by the county at private sale, regarding a lien for special assessments?", it would appear that a statement identical to the provision of the statute, section 57-28-21, to the effect that all general taxes, hail indemnity taxes, and special assessments remaining of record against the premises sold at the date of sale, except those installments of special assessments certified or to be certified to the county auditor which had not become due at the date of such sale, are cancelled.

It would appear that the ultimate effect of the 1969 amendment to section 57-28-21 was to give statutory credence to the result reached in our opinion of December 7, 1967, effectively establishing that the previous context of that statute did not work to repeal by implication the provisions of chapter 351 of the 1961 Sessions Laws.

We would note, however, that section 11-18-02 of the North Dakota Century Code, relating to the recording of deeds and the requirement of certification of the county auditor of taxes and assessments paid, has not been amended since issuance of our opinion of December 7, 1967, and that portion of our ruling which applies to the repeal by implication to the extent that it is irreconcilable with section 57-28-21 still exists in absence of amendment to consider installments of assessments certified or to be certified to the county auditor which had not become due at the date of such sale. That portion of our opinion is as follows:

"* * * where the tax deed conforms substantially to the statutory provisions in effect at the time the deed was issued, the deed is entitled to be filed even though the special assessments have not been paid. In this respect those provisions of section 11-18-02 that are in irreconcilable conflict with the statutory form of tax deed are deemed repealed by implication."

With regard to your final question, relating to whether under section 57-28-19 of the North Dakota Century Code, a municipal government has a prior right to purchase ahead of the former owner for only thirty days or at any point after the date of annual sale, we note that said section 57-28-19 provides in part:

"The former owner, his executor or administrator, or any member of his immediate family, shall have the right to repurchase all real estate forfeited to the county under the tax deed proceedings, so long as the tax title thereto remains in the county. However, in the event any city, town, or village has

theretofore made a special assessment for public improvements against any such tract, piece or parcel of land, which special assessment has become delinquent and remains unpaid, such city, town or village shall have a right to purchase for cash, at the appraised value, prior to that of the former owner. The county auditor of any county, immediately upon appraisal of such property, shall give notice thereof to the auditor of any such city, town or village and such city, town or village shall have thirty days within which to purchase said property. * * *."

We would also note that section 57-28-17 of the North Dakota Century Code, as amended, provides in the last paragraph as follows:

"* * * Notwithstanding the provisions of this section or other provisions of law, any such parcel of real estate that is subject to a special assessment lien for improvements made by a city may be sold between annual sales by the county auditor for cash to the city at whatever price less than the minimum sales price that is agreed upon by the board of county commissioners and the governing body of the city."

In view of the foregoing statutes, it appears clear that the city may purchase such parcels of land at any time the title thereto remains in the county and that the right of the city to purchase such parcels extends beyond the reference to the thirty day period mention in section 57-28-19. Considering the priority of right to purchase, however, it would appear that the prior right of the city to purchase is limited to thirty days after the time the county auditor of the county gives notice of the appraisal of such property to the auditor of such city. In other words, it would appear that the city is granted a prior right to purchase such property over the right of repurchase by the former owner for a period of thirty days after receiving notice of the appraisal thereof. If the city elects not to purchase within such period, the property may then obviously be resold to the former owner without further notice to such city. It is our opinion that notice must be given to the auditor of such city immediately upon the appraisal of such property as we held in our opinion of May 15, 1961, on pages 234-237 of the Attorney General's Report of July 1, 1960, to June 30, 1962, a Xerox copy of which is hereto attached.

We trust that the foregoing opinion, observations and comments will adequately set forth our interpretations regarding changes in the law as occasioned by the amendment to section 57-28-21 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General