

**OPINION
71-403**

August 13, 1971 (OPINION)

Mr. Vernon C. Cooper

Manager

Garrison Diversion Conservancy District

RE: Taxation - Interest and Penalties - Paid to Garrison Conservancy

This is in response to your letter in which you ask for an opinion on the following question:

"Are the county treasurers of the counties in the conservancy district required to remit interest and penalties on taxes they collect for the Garrison Diversion Conservancy District to the conservancy district along with the remittance of the tax collections, as set forth in 61-24-12, or does the interest and penalty on the conservancy's district's tax levies become a part of the County General Fund?"

You further advise that some counties within the conservancy district relying upon Section 57-20-22 do not remit penalty and interest collected on conservancy district tax levies.

Section 57-20-22 provides as follows:

"DISPOSITION OF PENALTY AND INTEREST. All penalties on general taxes and interest on certificates of sale issued, or deemed to be issued to the county, shall belong to the county and become a part of the general fund or of such other fund as the county commissioners may direct, except penalties and interest collected on the following items:

1. Taxes and parts of taxes due to townships, villages, cities, school districts, and park districts;
2. Hail indemnity taxes; and
3. Special assessments for public improvements, which shall be paid to the municipality levying the same, or whatever other taxing district or agency thereof is entitled to the original amount of such taxes or assessments."

This section is a general provision and would have application in all instances except as may otherwise be provided for by law. It has its roots in enactments prior to 1913.

Section 61-24-12 was enacted in 1955 and provides as follows:

"COUNTY TREASURERS TO COLLECT AND REMIT DISTRICT TAXES. The treasurer of each county in the district shall collect all district taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and

shall pay over to the treasurer of the Garrison Diversion Conservancy District, on the first day of each month, on demand, all taxes so collected during the preceding month, with interest and penalties collected thereon, and forthwith shall notify the secretary of the district of such payment."

This is a special provision and applies only to those taxes levied by the Garrison Diversion Conservancy District. Section 57-20-22 applies to all taxes. As a result, these two sections are in irreconcilable conflict. Where there is an irreconcilable conflict between two statutory provisions, section 1-02-07 would have application. The same provides as follows:

"PARTICULAR CONTROLS GENERAL. Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the two shall be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest legislative intent that such general provision shall prevail."

This section has been construed by the North Dakota Supreme Court in *Kershaw v. Burleigh County*, 47 N.W.2d. 132, wherein the court said and held that in cases of irreconcilable conflict between statutes, it will be presumed the Legislature intended that the earlier statute should give way to the latter one so far as it is in conflict therewith, even though both statutes were passed in the same session of the Legislature. In this instance, the statutes in question were not passed by the same Legislature, so consequently, there is no question that the general principle of law announced by the Supreme Court in construing Section 1-02-07 would have application here. A similar thought is expressed in Section 1-02-09.1 which provides as follows:

"MULTIPLE AMENDMENTS TO THE SAME PROVISION, ONE WITHOUT REFERENCE TO THE OTHER. If amendments to the same statute are enacted at the same or different sessions of the Legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails."

This section is not necessarily controlling in this instance, but is cited merely to illustrate that the Legislature has consistently provided that in instances of conflicting statutory provisions, the one enacted later should prevail if same cannot be reconciled.

Section 61-24-12 was enacted subsequent to 57-20-22.

In applying the aforementioned principles of law and statutory provisions, it is our opinion that the provisions of Section 61-24-12 prevail over Section 57-20-22 with reference to those taxes levied for the Garrison Diversion Conservancy District.

It is our further opinion that pursuant to the provisions of Section

61-24-12 the penalties and interest collected by the county are to paid over to the treasurer of the Garrison Conservancy District in the same manner as collected taxes are paid to the treasurer.

HELGI JOHANNESON

Attorney General