

LETTER OPINION
97-L-80

June 18, 1997

Ms. Robin Huseby
Barnes County State's Attorney
230 4th Street NW #303
Valley City, ND 58072

Dear Ms. Huseby:

Thank you for your letter inquiring about a county's authority to cancel special assessments without notification to the city in years after the initial tax appraisal of property acquired by tax deed. Your inquiry relates to the following factual circumstances provided me:

The following are transactions regarding parcel numbers 58-0200015 and 58-0200185:

Barnes County took the property October 1st, 1993.

On October 18th, 1993, a letter was sent to the City of Rogers city auditor, Mary Engle, stating that a tax appraisal meeting would be held on Friday, October 29th, 1993. Contents of the letter showed the amount of taxes and specials on the following parcels, which is the policy the Barnes County Commission uses for the first year minimum sales price.

- Parcel #58-0200015: \$156.73 in Taxes, \$839.00 in Special Assessments.
- Parcel #58-0200185: \$39.97 in Taxes, \$502.00 in Special Assessments.

The City of Rogers was asked to advise us if this met with their approval. No response was received, verbal or written.

The property was not sold at the sale or anytime in 1993. The city knows that they can buy property with specials after the sale for \$1.00, per the contracts we have with the cities. The City of Rogers neglected to purchase said property.

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We send letters to all cities that have *new* properties that we were having an appraisal meeting. In 1994, Rogers received no letter, due to the fact that there were no *new* properties on the list. At the appraisal hearing October 27th, 1994, the Commission lowered the minimum sale price for parcel #58-020015 from \$839.00 to \$150.00, and for parcel #58-0200185 from \$502.00 to \$200.00.

At the November 15th, 1994 sale, these two properties sold at the minimum sale price, which was set at the October 27th appraisal hearing.

On December 6th, 1994, we sent a letter to the city auditor requesting that they sign and return our form allowing our commissioners to cancel the specials at the county level. We never received our form back. Then we sent them another form on December 10th, 1994, which they never returned. Then, Mary or Doug Engle called and said that they were not going to cancel the specials.

We sent a letter February 29th, 1996 informing them that at the March 12th, 1996 Commission Meeting, the Commission would be canceling the specials as allowed by NDCC 57-28-21.

Doug called to be put on the agenda for the March 12th, 1996 meeting before the Commission canceled the specials. The Commission informed him that they would not cancel the specials at this meeting, but requested that Doug go to his Board and have a letter sent back to the Commission explaining their objections with the county canceling the specials on these two parcels, and the Commission would act on this matter at their April meeting.

At the April 2nd, 1996 meeting, the Auditor informed the Commission that no correspondence had been received from the City of Rogers. The Commission canceled the specials.

A letter was sent to the city auditor of the City of Rogers on April 9th, 1996, informing them that the Commission had canceled the specials on the two parcels.

You informed me that you are aware of 1994 N.D. Op. Att'y Gen. 18 which stated:

It is my opinion that a board of county commissioners, in determining the fair market value of property acquired by tax deed and to be sold at the annual November sale, may, in effect, cancel outstanding city special assessments against the property without the permission of the governing body of the city in which the property is located.

However, you wish to know what the county's notification requirements were for any year after the year of the original appraisal.

N.D.C.C. § 57-28-10 provides, in pertinent part, that "[a]ll property acquired by the county by tax deed must be appraised by the board of county commissioners at least thirty days before the annual sale under this chapter."

N.D.C.C. § 57-28-11 provides, in pertinent part:

After making the appraisal of property acquired by tax deed, the board of county commissioners shall set a date for hearing objections to the minimum sale price determined. At least ten days before the hearing, the county auditor shall mail to the auditor of any city . . . in which appraised property is located a written notice stating the time when objections to the established minimum sale price will be heard.

In the "ANALYSIS" section of 1994 N.D. Op. Att'y Gen. 18, 21-22, the purpose of these two statutes is set forth as follows:

N.D.C.C. §§ 57-28-10 and 57-28-11 indicate the procedures that must be followed by the board of county commissioners in determining the minimum sale price for property to be sold at the annual November sale. The board of county commissioners must appraise the property to be sold at the annual November sale. The appraised price represents the fair market value of the property. "If the fair market value of the property is less than the total amount due against the property, the board shall fix a fair minimum sale price for the property." N.D.C.C. § 57-28-10. The county auditor must mail to the city auditor in which the property is located, a notice of hearing to be held "when objections to the established minimum sale price will be heard. Any member or representative of the governing body . . . [of the city] may appear at the hearing with

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reference to the fair market value of appraised property, and the board [of county commissioners] may make appropriate changes in the minimum sale price of the property." N.D.C.C. § 57-28-11. "In this manner the city has the right to protect itself against establishing a minimum price too low to cover those unpaid installments of special assessments." [Reference omitted.]

. . . If the city remains dissatisfied with the determination of the board of county commissioners after the hearing, the city may appeal the matter to district court. See N.D.C.C. § 57-28-12. N.D.C.C. §§ 57-28-11 and 57-28-12 are the only procedures by which a city governing body may either object to, or appeal, the determination of the fair market value or the minimum sale price, by the board of county commissioners before the annual November sale.

Also see Horab v. Williams County, 19 N.W.2d 649 (N.D. 1945).

N.D.C.C. §§ 57-28-10 through 57-28-18 show the Legislature contemplates that not all property offered for sale at the annual election will be sold the first time it is offered. If not sold, the county auditor may make arrangement for its sale under N.D.C.C. §§ 57-28-17 and 57-28-17.1. But, if the unsold properties are not sold before thirty days before the next annual sale, then the county desiring to sell property under tax deed must again proceed under N.D.C.C. §§ 57-28-10 and 57-28-11. The sections do not provide any alternate procedure for placing unsold properties in the annual sale for the second or any succeeding time without compliance with N.D.C.C. §§ 57-28-10 and 57-28-11. It is therefore my opinion that counties must comply with N.D.C.C. §§ 57-28-10 and 57-28-11 each time the property is placed up for sale at the annual sale of tax deed property. The attached prior correspondence from this office shows the importance of notice in tax sale proceedings and provides support for a long-held belief that the appraisal and notice requirements must be undertaken each time the property is offered in the annual sale. See Letter from Attorney General Nicholas J. Spaeth to State's Attorney Vincent A. LaQua (December 19, 1991), Letter from Assistant Attorney General John E. Adams to State's Attorney Maurice E. Cook (January 26, 1972), and Letter from Special Assistant Attorney General Joseph R. Maichel to City Attorney John Richardson (November 30, 1964).

Sincerely,

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Heidi Heitkamp
ATTORNEY GENERAL

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Enclosures