

**LETTER OPINION
2003-L-58**

December 8, 2003

Mr. Richard C. Wilkes
Burke County State's Attorney
PO Box 876
Kenmare, ND 58746

Dear Mr. Wilkes:

Thank you for asking my opinion regarding whether a county may deed property acquired by a tax foreclosure to a city or township without approval of the grantee political subdivision. The question concerns N.D.C.C. § 57-28-17 which provides in pertinent part:

Notwithstanding the provisions of this section or other provisions of law, any property acquired by the county which is subject to a special assessment lien for improvements made by a city may be sold to that city for cash at any price agreed upon by the board of county commissioners and the governing body of the city.

This section relates to property the county has acquired by tax deed following foreclosure of a tax lien under N.D.C.C. ch. 57-28. Such property is to be sold at auction at an annual sale. See N.D.C.C. §§ 57-28-13, 57-28-14, 57-28-15, 57-28-16.

Section 57-28-17, N.D.C.C., allows property not sold at the annual sale to be sold at private sale before the next annual sale at a price based on the minimum sale price of the property and unpaid special assessments that are a lien against the property. See also N.D.C.C. §57-28-10 (prescribing the minimum sale price). The paragraph of section 57-28-17 quoted above allows the county to sell property subject to a lien for unpaid special assessments made by a city to that city at any price agreed upon by the county commissioners and the governing body of the city. You are correct in your analysis that the county could only deed the property to a city if the city agrees to the sale price. See Regstad v. Steffes, 448 N.W.2d 203, 207 (N.D. 1989).

You indicate the commissioners are also concerned about property acquired by the county in two cities, Northgate and Larson, which were dissolved. See N.D.C.C. ch. 40-53.1 (regarding dissolution of a city). The commissioners ask whether the county can deed

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such property to the cities without their approval or to a township without township approval.

In my opinion, the foregoing part of section 57-28-17 relating to sale to a city of property subject to a special assessment lien acquired by the county as a result of a tax foreclosure is limited to that situation and has no application to the property in Northgate and Larson which ceased to exist upon their dissolution. See Weeks v. Hetland, 202 N.W. 807, 811 (N.D. 1925) (holding village ceased to exist upon dissolution); N.D.C.C. § 40-53.1-04 (city subject to dissolution proceedings and is dissolved as of effective date set by county commissioners). In other words, there are no cities to hold title.

You advise that the county has proposed deeding or giving the former city property acquired by the county to the township in which the property is located. The purpose would be to defray or pass on the costs of demolition of dilapidated buildings on the property.

A township may "purchase and hold lands." N.D.C.C. § 58-03-01(2). It is also authorized to accept a gift. N.D.C.C. § 1-08-04.

But a county, unless it is a home rule county, may not give its property away. N.D. Const. art. X, § 18. See also N.D.A.G. 2003-L-51 (Article X, section 18 of the North Dakota Constitution restricts a political subdivision from most forms of gift giving); N.D.A.G. 2002-F-09 (concluding a county may not make a donation without statutory authority); N.D.A.G. 2002-L-05 (county property can only be conveyed if the transaction is supported by legal, equitable, or moral consideration).

Based on the foregoing, in my opinion, the county may not gratuitously deed the property acquired in the dissolved cities to the township.

Sincerely,

Wayne Stenehjem
Attorney General

tam/vkk