

**LETTER OPINION
2006-L-14**

April 17, 2006

Ms. Sharon W. Martens
Walsh County State's Attorney
600 Cooper Avenue
Grafton, ND 58237

Dear Ms. Martens:

Thank you for asking whether a county may sell land it has acquired for nonpayment of taxes to a city without first offering the land for sale at the annual November tax sale. For the reasons discussed below, it is my opinion that a county may not sell land to a city without first offering the land for sale at the annual November sale.

ANALYSIS

Chapter 57-28, N.D.C.C., sets out the procedures that must be followed when a county disposes of property acquired by tax deed,¹ including procedures to establish a minimum sales price for the property. Properties acquired by tax deed must be placed for public sale "on the third Tuesday of November of each year."²

The Legislature contemplated that not all property offered for sale at the annual sale will be sold the first time it is offered.³ If not sold at the annual sale, the county auditor may make other arrangements to privately sell the property under N.D.C.C. §§ 57-28-17 and 57-28-17.1.⁴

Section 57-28-17, N.D.C.C., provides:

Any property not sold at the annual November sale may be sold by the county auditor at private sale before the next annual November sale for not less than the property's minimum sale price. A parcel of real estate against which an unpaid special assessment continues as a lien under section 57-28-09 may be sold by the county auditor free of the lien if the governing body of the city in which the property is located finds that the

¹ N.D.A.G. 94-F-06.

² N.D.C.C. § 57-28-13. See also N.D.A.G. 2003-L-58 (under N.D.C.C. ch. 57-28, property acquired by tax deed following foreclosure of a tax lien is to be sold at an annual sale).

³ N.D.C.C. §§ 57-28-10 through 57-28-18; N.D.A.G. 97-L-80.

⁴ Id.; see also N.D.A.G. 2003-L-58 (under N.D.C.C. § 57-28-17, property not sold at the annual sale may be sold at a private sale before the next annual sale).

sum of the minimum sale price and the unpaid special assessment exceeds the market value of the property. If the governing body of the city makes this finding, it may cancel all or part of the special assessment lien against the property to reduce the lien to an amount which, when added to the minimum sale price, will be equal to the market value of the property. The action of the governing body shall be certified by the city auditor or clerk to the county auditor. The county auditor may then sell the property at private sale before the next annual November sale for not less than the resulting amount. The purchaser acquires the property free from any part of any lien for special assessment which was canceled by the governing body of the city, and the county auditor shall remove from the record any canceled special assessments.

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.⁵

You ask whether the last sentence in this section authorizes the county to sell property that has not yet been offered for sale at the annual November sale.

In construing a statute, the intent of the Legislature must be ascertained.⁶ Consideration should be given to the ordinary sense of the words used, their context, the purpose sought to be accomplished, and other related laws and circumstances.⁷

There are several sections preceding N.D.C.C. § 57-28-17 that primarily deal with how property sold at the annual sale must be valued and the minimum price for which it may be sold. Section 57-28-10, N.D.C.C., requires the county to appraise all property 30 days before the annual sale. If the fair market value of the property is more than the total due against it, the minimum sale price must be at least equal to the total due.⁸ If the fair market value is less than the total due, the county must fix a fair minimum sale price.⁹ The next two sections provide for a hearing and a process to appeal the county's determination of the minimum sale price.¹⁰ Section 57-28-15, N.D.C.C., sets forth the procedure for the

⁵ Emphasis added. Prior to its amendment in 1991, the words "between annual sales by the county auditor" followed "may be sold." See 1991 N.D. Sess. Laws ch. 659, § 22. There was no legislative history explaining the pre-1991 provision. See N.D.A.G. 83-45.

⁶ Ophaug v. Hildre, 42 N.W.2d 438, 440 (N.D. 1950).

⁷ Id.

⁸ N.D.C.C. § 57-28-10.

⁹ Id.

¹⁰ N.D.C.C. §§ 57-28-11 and 57-28-12.

sale. It requires the property to be sold to the highest bidder for no less than the minimum sale price.¹¹

The first paragraph in N.D.C.C. § 57-28-17 allows sales of property not sold at the annual sale to be sold at a private sale “for not less than the property’s minimum sale price.” It also allows for fixing a price when the special assessments and minimum sale price exceed the market value of the property.¹² All of these provisions deal with determining the price for which the property may be sold.

The final paragraph in N.D.C.C. § 57-28-17 then provides:

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.¹³

The “notwithstanding” language applies to two things. It authorizes the county to sell to the city¹⁴ and, notwithstanding other provisions of the law regulating the price for which the land may be sold, N.D.C.C. § 57-28-17 allows the county and city to agree on a price.

Thus, based on the context in which this language is used in relation to the laws referenced above, it appears the “notwithstanding” language relates to the sales price of the property and not to the timing of the sale.

The section immediately succeeding N.D.C.C. § 57-28-17 supports the position that the “notwithstanding” language was not intended to eliminate the requirement that the property first be offered for sale at the annual sale. It provides:

The board of county commissioners may by resolution engage licensed real estate brokers to attempt to sell property not sold at the annual November sale. . . . Property that is subject to a special assessment lien for improvements made by a city must first be offered for sale to the city.¹⁵

¹¹ N.D.C.C. § 57-28-15.

¹² N.D.C.C. § 57-28-17.

¹³ Emphasis added.

¹⁴ See Regstad v. Steffes, 448 N.W.2d 203, 207 (N.D. 1989) (the “notwithstanding” language allows a city to purchase property from the county and prevails over the general provisions giving former owners redemption or repurchase rights).

¹⁵ N.D.C.C. § 57-28-17.1.

The first sentence authorizes the county to engage real estate brokers to sell property “not sold at the annual November sale.” The last sentence requires such property (i.e., property not sold at the annual sale), if it is subject to a special assessment lien for city improvements, to first be offered for sale to the city.

Finally, as noted in N.D.A.G. Letter to Sperry (Sept. 25, 1990), in construing ambiguous or unclear statutes, “[w]eight is also given ‘to the long-continued, practical construction placed thereon by the officers charged with the duty of executing and applying the statute.’ Horst v. Guy, 219 N.W.2d 153, 159 (N.D. 1974). N.D.C.C. § 1-02-39(6).” In communications with a member of my staff, the auditors for Burleigh and Cass Counties indicated that in applying the statute, the counties would offer the property in the annual November tax sale before negotiating a sale to a city. The county auditors are the officers charged with executing and applying N.D.C.C. § 57-28-17, and their construction of the statute is entitled to some deference.¹⁶

Based on the foregoing, it is my opinion that property must first be offered for sale at the annual sale in November before the city may purchase it under N.D.C.C. § 57-28-17.

Sincerely,

Wayne Stenehjem
Attorney General

jak/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁷

¹⁶ N.D.C.C. § 1-02-39(6); N.D.A.G. Letter to Sperry (Sept. 25, 1990).

¹⁷ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).