

**LETTER OPINION  
2009-L-17**

October 23, 2009

Mr. Aaron W. Roseland  
Adams County State's Attorney  
PO Box 390  
Hettinger, ND 58639-0390

Dear Mr. Roseland:

Your predecessor in office requested my opinion about whether 2007 House Bill No. 1332 (H.B. 1332) has any effect upon N.D.C.C. § 57-20-21.1 which requires that tax payments be applied to the oldest unpaid delinquent taxes or special assessments due. For the reasons explained below, it is my opinion that section 57-20-21.1 is clear and unambiguous and H.B. 1332 should not affect the requirement in section 57-20-21.1 that tax payments be applied to the oldest unpaid delinquent taxes or special assessments due.

**ANALYSIS**

In 2007, the Legislature amended N.D.C.C. § 57-20-26 by reducing the amount of time a landowner has to pay delinquent property taxes from four to two years.<sup>1</sup> The Legislature similarly amended N.D.C.C. § 57-28-01 by reducing the minimum number of years a county has before it may foreclose a lien for unpaid property taxes.<sup>2</sup> The pertinent sections of H.B. 1332 are effective for taxable years beginning after December 31, 2006.<sup>3</sup> "Property tax proceedings relating to property taxes due or delinquent for any taxable year prior to 2007 are subject to provisions of law that were in effect on December 31, 2006."<sup>4</sup>

One effect of H.B. 1332 can be illustrated through the example of a landowner owing property taxes for the 2007 tax year. The 2007 property taxes were due and payable in 2008.<sup>5</sup> If the landowner failed to pay the 2007 property taxes and the unpaid taxes

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<sup>1</sup> H.B. 1332, 2007 N.D. Leg.

<sup>2</sup> Id.

<sup>3</sup> See Note, N.D.C.C. §§ 57-20-26 (2007), 57-28-01 (2007).

<sup>4</sup> Id.

<sup>5</sup> N.D.C.C. § 57-20-01.

became a lien on the property,<sup>6</sup> the lien would be subject to foreclosure in October 2010.<sup>7</sup> Prior to the enactment of H.B. 1332, the lien for the unpaid delinquent 2007 property taxes would have been subject to foreclosure in October 2012.

In contrast, because of the effective date in H.B. 1332, the bill did not change the four years a landowner had to pay delinquent 2005 or 2006 property taxes, or the four years a county was required to wait to foreclose a tax lien for unpaid 2006 or earlier property taxes.<sup>8</sup> Consequently, under N.D.C.C. §§ 57-20-26 (2005) and 57-28-01 (2005), a landowner still has until 2010 to pay delinquent 2005 property taxes and 2011 to pay delinquent 2006 property taxes before a county may foreclose the delinquent tax liens.<sup>9</sup> The tax levy date and the final due date before the county can foreclose a tax lien for unpaid delinquent taxes are summarized by the following chart:

<u>Levy Year</u>	<u>Tax Levy Date</u>	<u>Earliest Foreclosure Date</u>
2005	Jan. 1, 2006	Oct. 1, 2010
2006	Jan. 1, 2007	Oct. 1, 2011
2007	Jan. 1, 2008	Oct. 1, 2010
2008	Jan. 1, 2009	Oct. 1, 2011 <sup>10</sup>

Since a county may foreclose a lien for delinquent 2007 property taxes before it may foreclose a lien for delinquent 2006 property taxes, your predecessor questioned whether a landowner may direct payments towards delinquent 2007 property taxes before making payments towards delinquent 2006 property taxes, if property taxes for both taxable years remain unpaid. He referred to N.D.C.C. § 57-20-21.1, which requires payments to be applied to the oldest unpaid delinquent taxes: "payments must be applied first to the oldest unpaid delinquent taxes or special assessments due, if any, shown to exist upon the property for which the tax payments are made, including any penalty and interest."<sup>11</sup> The result is that a landowner with delinquent property taxes for years 2005, 2006, and 2007 will have to pay all three years of delinquent property taxes before October 2010 to avoid foreclosure on the 2005 and 2007 tax liens.

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<sup>6</sup> N.D.C.C. § 57-20-26.

<sup>7</sup> See N.D.C.C. §§ 57-20-26 (2007), 57-28-01 (2007). A similar result will also occur in 2011 for taxes levied in 2006 and 2008.

<sup>8</sup> See Note, N.D.C.C. §§ 57-20-26 (2007), 57-28-01 (2007).

<sup>9</sup> Id.

<sup>10</sup> Hearing on H.B. 1332 Before the House Comm. on Finance and Taxation, 2007 N.D. Leg. (Jan. 23) (Statements by Michael Montplaisir, Auditor, Cass County); Hearing on H.B. 1332 Before the Senate Comm. on Political Subdivisions, 2007 N.D. Leg. (Mar. 1) (Statements by Michael Montplaisir, Auditor, Cass County).

<sup>11</sup> N.D.C.C. § 57-20-21.1.

Courts have balanced the public's interest in the fair and just collection of taxes from all taxpayers with the recognition that citizens' property rights should not be taken away without full compliance with legal procedures. Landowners are duty bound to pay the taxes imposed upon their land, and are charged with knowledge that upon failure to do so, the county would sell the land and acquire title.<sup>12</sup> "But such proceedings are drastic and every step therein prescribed by the statute must be strictly complied with. Failure to do so vitiates the deed."<sup>13</sup> For a valid tax sale, there must be strict compliance with mandatory and jurisdictional requirements of the relevant statutes, and those statutes will be strictly construed in favor of the owners of the property.<sup>14</sup> "The object of a tax sale is the collection of revenue and not the acquisition of title to real estate by either the county or the state."<sup>15</sup>

The North Dakota Supreme Court recently summarized the standards to be used when interpreting statutes:

Our primary goal in statutory construction is to ascertain the intent of the legislature, and we first look to the plain language of the statute and give each word of the statute its ordinary meaning. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. If, however, the statute is ambiguous or if adherence to the strict letter of the statute would lead to an absurd or ludicrous result, a court may resort to extrinsic aids, such as legislative history, to interpret the statute. A statute is ambiguous if it is susceptible to meanings that are different, but rational. We presume the legislature did not intend an absurd or ludicrous result or unjust consequences, and we construe statutes in a practical manner, giving consideration to the context of the statutes and the purpose for which they were enacted.<sup>16</sup>

I do not believe the wording of N.D.C.C. § 57-20-21.1 is ambiguous or the law is susceptible to different meanings. But "statutes that are clear and unambiguous when read separately may contain a latent ambiguity when read together and applied to a particular set of facts."<sup>17</sup> When section 57-20-21.1 is read together with the pre-2007 and 2007 versions of N.D.C.C. §§ 57-20-26 and 57-28-01, a potential ambiguity arises.

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<sup>12</sup> Mayer v. Ranum, 30 N.W.2d 608, 611 (N.D. 1948).

<sup>13</sup> Id.

<sup>14</sup> Van Raden Homes, Inc. v. Dakota View Estates, 546 N.W.2d 843, 846 (N.D. 1996).

<sup>15</sup> Eikevik v. Lee, 13 N.W.2d 94, 97 (N.D. 1944).

<sup>16</sup> State v. Brown, 771 N.W.2d 267, 273 (N.D. 2009), quoting State v. Fasteen, 740 N.W.2d 60 (N.D. 2007) (citations omitted).

<sup>17</sup> Kroh v. Am. Family Ins., 487 N.W.2d 306, 308 (N.D. 1992).

A county may foreclose a lien for delinquent 2007 property taxes before it may foreclose a lien for delinquent 2006 property taxes; but, because N.D.C.C. § 57-20-21.1 requires payments be applied to the oldest unpaid delinquent taxes, a landowner cannot apply payments towards the delinquent 2007 taxes until the delinquent 2006 taxes are paid. The effect is that even though a county may not foreclose a 2006 tax lien until 2011, a landowner must satisfy the 2006 property tax lien before October 2010 to be able to make any payments towards delinquent 2007 property taxes, or risk foreclosure of the latter lien. The result is that a landowner with delinquent property taxes for years 2005, 2006, and 2007 will have to pay all three years of delinquent property taxes before October 2010 to avoid foreclosure on the 2005 and 2007 tax liens.<sup>18</sup>

Although application of H.B. 1332 and N.D.C.C. § 57-20-21.1 may present a one-time burden upon landowners with liens for unpaid property taxes, it is my opinion that this burden does not justify ignoring the plain meaning of N.D.C.C. § 57-20-21.1, which was enacted to encourage landowners to pay unpaid delinquent property taxes.<sup>19</sup> Anticipating that H.B. 1332 may create an undue burden, the Legislature enacted N.D.C.C. § 57-20-01.2, which provides:

The board of county commissioners may establish a policy to waive all or part of penalties and interest on delinquent real estate taxes if the board of county commissioners believes the reduced period for foreclosure of tax liens under section 15-08-19, 57-20-26, and 57-28-01 creates a hardship for taxpayers. The board shall apply the policy uniformly to all taxpayers.<sup>20</sup>

Counties may use this authority to alleviate the impact of this one-time consequence for landowners with unpaid delinquent property taxes.

Therefore, it is my opinion that H.B. 1332 does not affect the requirement in N.D.C.C. § 57-20-21.1 that a county must apply payments for real estate taxes or special

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<sup>18</sup> Testimony in favor of H.B. 1332 indicates the amendment would require two years of tax payments to be made to avoid foreclosure in some years. Taxes levied in 2005 and 2007 would both be subject to foreclosure in 2010 and taxes levied in 2006 and 2008 would both be subject to foreclosure in 2011. Hearing on H.B. 1332 Before the House Comm. on Finance and Taxation, 2007 N.D. Leg. (Jan. 23) (Statements by Michael Montplaisir, Auditor, Cass County); Hearing on H.B. 1332 Before the Senate Comm. on Political Subdivisions, 2007 N.D. Leg. (Mar. 1) (Statements by Michael Montplaisir, Auditor, Cass County).

<sup>19</sup> H.B. 1483, 1989 N.D. Leg.

<sup>20</sup> H.B. 1332, 2007 N.D. Leg. The law is effective through October 1, 2011.

LETTER OPINION 2009-L-17  
October 23, 2009  
Page 5

assessments due to the oldest unpaid delinquent taxes. However, I encourage counties to establish a policy and apply N.D.C.C. § 57-20-01.2 to reduce the burden upon landowners caused by H.B. 1332.

Sincerely,

Wayne Stenehjem  
Attorney General

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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.<sup>21</sup>

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<sup>21</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).