

LETTER OPINION
97-L-4

January 16, 1997

Mr. Brian Grosinger
Morton County Assistant
State's Attorney
210 2nd Ave NW
Mandan, ND 58554

Dear Mr. Grosinger:

Thank you for your letter concerning the collection of mobile home taxes.

Your letter expands on an opinion I issued to you on January 26, 1995, concluding that distraining property under N.D.C.C. § 57-22-03 to collect delinquent mobile home taxes did not violate due process. In part, this conclusion was based on my interpretation of N.D.C.C. § 57-55-11 to require that a ten-day advance warning be provided to the delinquent taxpayer before property can be distrained under N.D.C.C. § 57-22-03. Your most recent letter asks whether N.D.C.C. § 57-55-11 limits the use of distraint under N.D.C.C. § 57-22-03 to emergency situations where the director of tax equalization determines that the delinquent taxpayer is a transient or nonresident and that the taxes will likely become uncollectible if action is not taken immediately.

N.D.C.C. § 57-55-11 provides in part:

If the director determines that any person is not complying with the provisions of this chapter, the director shall give such person a warning that if such person fails to comply within ten days after the issuance of such warning, the director of tax equalization may begin civil action against such person. In the alternative, if the director of tax equalization determines that there are mobile homes in the director's county belonging to transients or nonresidents who have failed to comply with the provisions of this chapter, and in the director's opinion the taxes will be uncollectible if immediate action is not taken, the director shall notify the county sheriff. The county sheriff shall

Mr. Brian Grosinger
January 16, 1997
Page 2

immediately, and in no event later than five days after receiving such notification, commence proceedings as provided by law to collect the taxes, penalties, and interest, if any, which are due.

In addition to this section, the state tax commissioner has authorized the use of the procedures in N.D.C.C. ch. 57-22 to collect delinquent mobile home taxes. N.D. Admin. Code § 81-02.1-01-10. See also N.D.C.C. § 57-55-09 (rulemaking authority of commissioner). The application of N.D.C.C. ch. 57-22 is also impliedly authorized because the mobile home tax is a personal property tax rather than a real estate tax. Letter from Attorney General Allen Olson to Linn Sherman (September 25, 1974).

N.D.C.C. § 57-22-03 provides in part:

The county treasurer, on the fifteenth day of October, shall deliver the list of unpaid delinquent personal property taxes to the sheriff of his county, who immediately shall proceed to collect all such taxes, and if they are not paid upon demand, he shall distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same with penalties and costs.

As a result, a county may proceed against a delinquent taxpayer under N.D.C.C. § 57-55-11 or the taxpayer's property may be distrained under N.D.C.C. § 57-22-03 to collect delinquent mobile home taxes, unless the latter procedure conflicts with a more specific provision in N.D.C.C. ch. 57-55.

N.D.C.C. § 57-55-11 requires that a warning be given to the taxpayer in non-emergency situations at least ten days before collection efforts may begin. It does not limit in any way the collection procedures that may be used once the ten-day warning period expires, nor does it authorize distraint for emergency situations only. As I noted in my previous letter, the United States Supreme Court has repeatedly held that distraint is an appropriate summary procedure for collecting unpaid delinquent taxes. 1995 N.D. Op. Att'y Gen. L-15, L-17. The warning requirement in N.D.C.C. § 57-55-11 does not support an inference that this long-standing method of tax collection cannot be used, even after the ten-day warning period has expired.

Construing N.D.C.C. § 57-22-03 in conjunction with N.D.C.C. § 57-55-11 and to avoid any constitutional questions, I previously concluded that a director of tax equalization must provide the

Mr. Brian Grosinger
January 16, 1997
Page 3

warning required in N.D.C.C. § 57-55-11 before a sheriff may distrain property under N.D.C.C. § 57-22-03 to collect delinquent mobile home taxes. This conclusion assumed that an emergency situation did not exist, which would affect the process to which a delinquent taxpayer is constitutionally entitled before being permanently deprived of the property.

The procedure authorized in N.D.C.C. § 57-22-03 does not conflict with N.D.C.C. § 57-55-11 if preceded by the required advance warning or if an emergency situation exists as described in that section. Therefore, if either of these conditions is met, it is my opinion that a taxpayer's property may be distrained under N.D.C.C. § 57-22-03 to collect delinquent mobile home taxes.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jcf/vkk