

## **N.D.A.G. Letter to Duppler (March 14, 1986)**

March 14, 1986

Mr. Alan K. Duppler  
Mercer County State's Attorney  
Mercer County Courthouse  
Stanton, North Dakota 58571

Dear Mr. Duppler:

Thank you for your letter of January 16, 1986, requesting an opinion on two questions.

The first question is whether a county board of commissioners may set a sale price in excess of the amount stated in the notice to effect a redemption, plus the total amount of all subsequent taxes with interest, penalties and costs, when property is being repurchased pursuant to N.D.C.C. § 57-28-19. The second question is whether a third party can repurchase property on behalf of the former owner under the provisions of N.D.C.C. § 57-28-19.

N.D.C.C. § 57-28-19 provides, in pertinent part, as follows:

57-28-19. RIGHTS OF FORMER OWNER TO REPURCHASE. The former owner, the executor or administrator, or any member of the immediate family, shall have the right to repurchase all real estate forfeited to the county under tax deed proceedings, so long as the tax title thereto remains in the county.

. . . The purchase by a former owner may be for cash or upon contract for deed made by and between the board of county commissioners and the former owner, the executor or administrator, or any member of the immediate family. The consideration of such contract shall include:

1. The total amount required to be paid in the notice to effect a redemption.
2. The total amount of all subsequent taxes with interest, penalties, and costs.

If the fair market value of such property at the time of the repurchase thereof is less than the amount to be paid to effect a redemption, together with all subsequent taxes, interest, penalties, and costs, the board shall fix a fair and just sale price for such property, and shall require the former owner, the executor or administrator, or any member of the immediate family, to pay at least twenty-five percent of the total contract price in cash and

the remainder shall be payable in not to exceed ten annual equal installments as the board of county commissioners may determine. [Emphasis supplied.]

In North Dakota, the general rule is that counties are creatures of the constitution and may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 329 (N.D. 1985).

In addition, when a statute is not ambiguous, ". . .the letter of it is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05. "[T]he Legislative intent is presumed clear from the face of the statute." Milbank Mutual Insurance Co. v. Dairyland Insurance Co., 373 N.W.2d 888, 891 (N.D. 1985).

N.D.C.C. § 57-28-19 clearly sets forth the consideration for a repurchase contract. It is only when the fair market value of the property is less than the statutory consideration that a county board of commissioners can fix a sale price accordingly. There is no provision in N.D.C.C. § 57-28-19 which would permit a board of county commissioners to fix a sale price in excess of the amount stated in the statute

Therefore, it is my opinion that a county board of commissioners may not set a sale price in excess of the amount stated in the notice to effect a redemption, plus the total amount of all subsequent taxes with interest, penalties and costs, when property is being repurchased pursuant to N.D.C.C. § 57-28-19.

The North Dakota Supreme Court, in Frandsen v. Casey, 73 N.W.2d 436 (N.D. 1955), held that where a person having no right to repurchase land acquired by a county under a tax deed furnishes the money to repurchase the land, title vests in the former record owner.

Therefore, it is my further opinion that a third party can repurchase property on behalf of the former owner under the provisions of N.D.C.C. § 57-28-19, and the county must deed the property to the former owner.

Sincerely,

Nicholas J. Spaeth

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