

N.D.A.G. Letter to Manly (Dec. 6, 1989)

December 6, 1989

Mr. Robert E. Manly
Eddy County State's Attorney
P.O. Box 352
New Rockford, ND 58356

Dear Mr. Manly:

Thank you for your June 23, 1989, letter inquiring whether a register of deeds may record a personal representative's deed without a county auditor's certificate showing the delinquent real estate taxes and assessments against the property have been paid. I apologize for the delay in answering your letter.

A member of my staff received a telephone call from attorney John Hovey of New Rockford, who stated that your letter was sent at his request. Mr. Hovey further advised my staff member that the deed in question related to land sold by contract for deed by a person who is now deceased. The contract is now completed and the personal representative has executed a deed of conveyance.

For the following reasons, it is my opinion that a register of deeds may not record the personal representative's deed without the certificate of the auditor required under N.D.C.C. § 11-18-02.

A register of deeds is a ministerial officer. Rising v. Dickinson, 121 N.W. 616, 617 (N.D. 1909). The authority of ministerial officers is to be strictly construed. Youngblood v. United States, 141 F.2d 912, 913 (6th Cir. 1944).

Generally, the duty of the register is to receive and file, or receive and record, as the case may be, such instruments, and only such instruments, as by law are entitled to be filed or recorded, and to file or record them in such manner as to serve all the purposes of the law.

76 C.J.S. Register of Deeds § 10 (1952).

N.D.C.C. § 11-18-02 provides:

Register of deeds not to record certain instruments unless they bear auditor's certificate of transfer. Except as otherwise provided in section 11-18-03, the register of deeds shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the

lands described therein has been entered and that the delinquent taxes and special assessments or installment of special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments or installment of special assessments have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes.

N.D.C.C. § 11-18-03 sets forth those documents a register of deeds may record without the auditor's certificate referred to in N.D.C.C. § 11-18-02. Although N.D.C.C. § 11-18-03(3) authorizes a final decree of distribution or an order terminating joint tenancy to be recorded without the auditor's certificate, no language in N.D.C.C. § 11-18-03 creates a similar exception for a personal representative's deed for land sold by contract for deed by a person who is now deceased. "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." N.D.C.C. § 1-02-05.

As a ministerial officer without statutory authority to the contrary, a register of deeds may not record a personal representative's deed for land sold by contract for deed by a person who is now deceased without the auditor's certificate required under N.D.C.C. § 11-18-02.

Sincerely,

Nicholas J. Spaeth

cv