

OPINION
66-345 (Jan 12)

January 12, 1966 (OPINION)

Mr. Neil Thompson

State's Attorney

Ramsey County

RE: Taxes - Delinquent Special Assessments - Sale

This is in response to to your request for a formal opinion on the following facts:

Real estate which is located in Devils Lake, North Dakota, had been subject to special assessments which were not paid. The property was brought up for sale under the appropriate provisions of law, Title No. 57. At the time the property was up for sale no bids were received from anyone on the specific property. You inquire whether or not the tax certificate is to be issued to the county or to the city.

In your letter you refer to section 40-21-01, which pertains to elections of municipalities. This reference quite obviously is in error and we presume you probably had reference to section 40-25-01. This section substantially provides that property upon which special assessments or installments have become delinquent shall be sold to enforce the collection thereof in the same manner as provided for in Title No. 57 pertaining to the sale of real property for delinquent general taxes. The sale of real property for general taxes under the provisions of section 57-24-14 substantially provides that if there is no bidder the treasurer shall bid for same in the name of the county. The county then acquires the equitable and legal rights to the property. However, as to the sale of property on which only special assessments are delinquent and no general taxes are unpaid on the property, section 40-25-03 would seem to prevail. This section, amongst other things, provides as follows:

* * * * If the sale is made only for special assessments assessed by a municipality or by a taxing district other than the county, the county auditor shall declare the property sold to the municipality or taxing district which assessed such special assessments if there are not private bidders. * * * *."
(Emphasis supplied.)

This section apparently would control under the facts presented. If general taxes were delinquent, together with special assessments, section 40-25-03 would control, in which instance the property would go to the county and the certificate of sale would cover both general taxes and special assessments which were delinquent.

While section 40-25-01 makes general reference to Title No. 57 and states that the procedure set forth therein shall apply, the

provisions of section 40-25-03 would still prevail as to the specific provisions contained therein. In this respect the provisions of Title No. 57 are general in nature, but as to property being sold under the provisions of section 40-25-03, the special provisions therein would prevail over the general provisions.

We are unable to find any case law on this topic, nor do we have any case law construing the specific sections involved. In this instance the rules of construction as provided for in section 1-02-07 of the North Dakota Century Code would prevail. Under the concept as stated in said section, it is our opinion that the property in question on which only special assessments are delinquent, when sold for taxes and if no bids are received thereon, the auditor as a matter of law declares the property sold to the municipality. This, in effect, means that the municipality will receive the tax certificate. The municipality would then be in the same position as a private purchaser and the provisions of section 57-27-01 and section 57-27-02 would apply.

HELGI JOHANNESON

Attorney General