

**OPINION**  
**66-410**

May 25, 1966 (OPINION)

Mr. Eugene A. Kruger, State's Attorney

Cass County

RE: Taxation - Tax Sale - Transfer of Land to City

This in reply to your letter of inquiry as to transfer of tax sale lands between county and city.

You inform us that:

For many years and particularly of late, we have been encountering difficulties primarily with city lots that are returned to the County for failure to pay delinquent real estate taxes.

As a practical matter, it seems the County has little, if any, interest in these lots and they become a heavy burden on the County because of things like up-keep, possible exposure to liability, etc. Some lots have run-down and dilapidated buildings on them and this causes the County expense to demolish the buildings after the City has condemned the structures and, of course, makes the County responsible for the buildings and again increases the chance of exposure to liability.

First the property is of practically no interest or use to the County and the City is more concerned with the property because generally there are special assessments against several of them. What are the ways and means of turning the property over to the parties that are concerned? I can find no provisions in the statutes for such a purchase, but it seems to me that because of the reasons stated above, it would be advisable and practical for the County to deed the property back to the municipality.

I would appreciate very much your opinion as to whether a transfer is possible and the suggested means and effect of such a transfer."

We assume that you are familiar with the provisions of section 40-25-09 and section 40-25-10 of the North Dakota Century Code, which provide as follows:

40-25-09. PURCHASE OF TAX CERTIFICATE BY MUNICIPALITY FROM COUNTY - REGULATIONS GOVERNING ASSIGNMENT AND REDEMPTION. The municipal treasurer, subject to the direction of the governing body of the municipality, may purchase from the county tax sale certificates which have not been assigned by the county, covering any property bid in by the county treasurer at tax

sales against which there are special assessment tax liens in favor of the municipality. The assignment shall be made on the same terms as are provided for assignments by the county to individuals except that the amounts of the special assessment liens assessed by the municipality shall not be collected by the county treasurer from the municipality. If no redemption is made from the tax sale, the real estate covered by the certificate which has been assigned to a municipality shall become the absolute property of such municipality at the expiration of three years from the date of the tax sale, and such property may be disposed of by the municipality at public or private sale as may be provided by the governing body."

40-25-10. TAX DEED TO MUNICIPALITY HOLDING TAX SALE CERTIFICATE FOR GENERAL TAXES. If lands are not redeemed from a tax sale for delinquent general taxes and special assessments and the municipality which levied the special assessments shall have purchased an assignment of the certificate covering general taxes from the county, the county auditor, at the expiration of the period of redemption, shall be issued until notice of the expiration of the period of redemption has been given as is required in the case of a sale for general taxes."

Assuming the city is interested in either obtaining tax title to the property or retaining full right to collect its special assessments, it would thus appear that prior to issuance of tax deed to the county the city could obtain tax sale certificate, be duly excused from immediate payment of its special assessment lien and could eventually obtain a tax title to the premises.

Likewise, where tax deed has been previously issued to the county and where "fair market value" is less than "all general taxes, installments of special assessments, hail indemnity taxes, penalties, interest, and costs", it would seem possible for the Board of County Commissioners to fix a "fair and just minimum sale price for such property" within the meaning of section 57-28-10 of the 1965 Supplement to the North Dakota Century Code which, in a proper case, could probably equal all general taxes, penalties, interest and costs, and if not "outbid" by another bidder, the city could purchase at the annual sale. Amount of special assessments or other taxes not covered by the "fair and just minimum sale price" could presumably be cancelled pursuant to section 57-28-20 and 57-28-21 of the North Dakota Century Code, although obviously the city could hold its tax title until such time as it was able to resell for such amount as would justify its purchase.

We do not find any authorization for a transfer between county and city where the city does not take action to "purchase" within the meaning of the statutes hereinbefore considered. While obviously section 40-25-09 and section 40-25-10 previously considered herein do contemplate the city may wish to take action to protect its special assessments, or to obtain the property, they certainly do not require it to take such action.

The criteria you outline does at least suggest that from the County's standpoint it may be desirable to dispose of some of this property possibly without regard to collection of general taxes or a "fair and

just minimum sale price" and that such disposition be made to the city. Such disposition, without action by the city, would require additional legislation. In view of the provisions of Section 185 of the North Dakota Constitution, something equivalent to the "fair and just minimum sale price" currently provided for by section 57-28-10 of the North Dakota Century Code, as a consideration for such a transfer might well be desirable, in any such legislation.

ATTORNEY GENERAL

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