

**OPINION
67-257**

January 20, 1967 (OPINION)

Mr. Robert L. Eckert

State's Attorney

Richland County

RE: Taxation - Discount - Drain Assessments

This is in reply to your letter of January 16, 1967, relative to the payment of taxes. You state the following facts and question:

The question that I ask relates to payment of drain assessments pursuant to Chapter 61-21 of the North Dakota Century Code. As you are aware, if payment is made on real estate taxes prior to February 15, the taxpayer is entitled to a 5 percent discount (57-20-09). If a land owner pays the general tax in full, but does not pay the drainage tax on or before February 15, is he still entitled to a 5 percent discount?"

Section 57-20-09 of the North Dakota Century Code provides:

DISCOUNT FOR EARLY PAYMENT OF TAX. The county treasurer shall allow a five per cent discount to all taxpayers who shall pay all of the real estate taxes levied on any tract or parcel of property in any one year in full on or before February fifteenth prior to the date of delinquency. Such discount shall apply to all general real estate taxes levied for state, county, city, township, village, school district, and park district purposes, but shall not apply to personal property taxes, special assessment installments, or hail indemnity taxes. Whenever the county commissioners, by resolution, determine that an emergency exists in any county by virtue of weather or other catastrophe they may extend the discount period for an additional thirty days."

While the drain taxes provided for in Chapter 61-21 constitute a "special tax" on the benefited property, are a lien upon such property until fully paid, and are of equal rank and order with the lien of general taxes (see section 6-21-52), they nevertheless are in the nature of a special assessment. They are assessed against the property in accordance with the benefits derived from the drain. This office, on June 3, 1954, in an opinion to the State's Attorney of Burleigh County, held that the special discount provided for in section 57-20-09 should be allowed upon the payment of all real estate taxes, even though special assessment installments were not paid. Since the drain assessments made pursuant to Chapter 61-21 of the North Dakota Century Code are in the nature of special assessments, we believe the rationale of that opinion is controlling in this instance. The opinion was based upon the fact that "general real estate taxes" and "special assessments" are not in the strictest sense of the term synonymous.

We would further note, with regard to special assessments made under the provisions of title 40 governing cities and villages, that the 1965 Legislative assembly amended section 40-24-16 to provide that, in the event the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, he must allocate the amount of such payment between taxes and special assessments which are then due. It would not now be possible to pay the full amount of general real estate taxes without payment of the special assessments due, since the statute requires the allocation between the general taxes and special assessments if the entire amount is not paid. However, it would appear that this provision is applicable only to special assessments levied under the provisions of title 40.

In summary, it is our opinion that a landowner may pay his general real estate taxes in full (including the amounts of special assessments which may be due under the provisions of title 40 of the North Dakota Century Code) and receive the 5 percent discount provided for in section 57-20-09 even though he does not pay the drain assessments which have been levied under the provisions of Chapter 61-21.

HELGI JOHANNESON

Attorney General