

**OPINION
74-327**

September 3, 1974 (OPINION)

Mr. Albert J. Hardy
Assistant States Attorney
Stark County
Dickinson, ND 58601

Dear Mr. Hardy:

This is in response to your letter of August 14, 1974, wherein you request an opinion of this office relative to sections 11-18-02 and 11-18-03 of the North Dakota Century Code. You relate a situation which has arisen in your county and submit a question based thereon as follows:

"The following situation has developed here in Stark County upon which we would appreciate receiving an opinion from your office.

The defendant in a foreclosure action subsequent to the entry of judgment and issuance of a sheriff's certificate of sale on execution, redeemed the property. He received a certificate of redemption which he is attempting to have recorded at this time.

The Register of Deeds has refused to record the document without the certificate of the County Auditor showing that the delinquent taxes against the property have been paid. There is presently approximately \$6,000 outstanding of delinquent taxes. The County Auditor, without payment of taxes, has refused to issue such a certificate, and accordingly, the certificate of redemption has not been recorded. The basis for the decision of the County Auditor and Register of Deeds in refusing to record the document is predicated on section 11-18-02 and 11-18-03 of the North Dakota Century Code. Our question is whether or not a certificate of redemption is entitled to be recorded with or without the County Auditor's certificate, which cannot be obtained due to the nonpayment of taxes."

You have referred to section 11-18-02 of the North Dakota Century Code, which relates to the prohibition against recording instruments unless they bear the auditor's certificate of transfer, which section provides as follows:

"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 or patent unless there is entered thereon a certificate of the county auditor showing that a transfer or the lands described therein has been entered and that the delinquent taxes and special assessments or installments 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 installments of special assessments have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes." (emphasis supplied)

Your inquiry specifically relates to a certificate of redemption. We note that the statute specifies "deed or patent". To this extent we do not believe the statute applies to other than deeds, patents, or other instruments which in effect, transfer the legal title to property, in addition to other instruments which are specifically exempted by section 11-18-03 of the North Dakota Century Code.

To further amplify this, we note section 28-24-06 of the North Dakota Century Code, relating to redemption of real estate, which provides in pertinent part, as follows:

"REDEMPTION BY DEBTOR - RECORDING CERTIFICATE - RIGHTS OF REDEMPTION. * * * Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be recorded in the office of the register of deeds of the county in which the property is situated and the register of deeds must note the record thereof in the margin of the record of the certificate of sale. * * * .
"

In view of the foregoing provisions and more particularly in view of the fundamental concept of certificates of redemption, it appears that such instruments are given the treatment afforded other dealings and notices affecting equitable title. To this extent a certificate of redemption may be considered an equitable interest and recordation of such is treated no differently than a satisfaction or mortgage. There does not appear to be any transfer of legal title by virtue of such instrument, and to this same extent it would appear that a Sheriff's Certificate of Sale on foreclosure of mortgage does not transfer legal title but rather an equitable title which may, in absence of redemption, mature into legal title by virtue of a Sheriff's Deed. We would note, however, that a Sheriff's Certificate of Sale on mortgage foreclosure is specifically exempted by section 11-18-03 of the North Dakota Century Code, perhaps for the same theoretical reason that the same does not of itself convey legal title. At any rate, it appears that a certificate of redemption is the equivalent of an equitable assessment of the rights of a Sheriff's certificate and that the same does not transfer legal title but only equitable interests. To this extent it appears that such certificate is tantamount to a release of mortgage or lien and as such, does not affect the legal title at the point of recordation. It further appears that the record legal title holder of the premises affected would still remain record owner, unaffected by the recordation of such certificate of redemption as the same relates to the legal title. Tax liens or delinquent taxes assessed against the subject premises, if any, would still exist as to the equitable interests of the taxing authority and would also remain unaffected by the recordation of a certificate of redemption. Your letter does not, however, furnish sufficient facts upon which to base a sound legal conclusion with regard to the rights of the parties interested as pertaining to Sheriff's Certificate, Certificate of Redemption, or

other unspecified equitable interests that may exist relative to the subject premises. To this extent and as the same concerns recordation of certificates of redemption, however, it would appear that the rights as may be established by the facts of foreclosure would remain unaffected by such recordation and such issue would be extrinsic to the question presented by your letter of inquiry.

In view of the foregoing observations and in direct response to your question, we are of the opinion that a certificate of redemption is entitled to be recorded without the County Auditor's Certificate certifying that the taxes and special assessments have been paid and without regard to taxes whatsoever.

We trust that the foregoing observations, comments and expressions will adequately set forth our opinion upon the matters submitted.

Sincerely yours,

Allen I. Olson

Attorney General

State of North Dakota