

OPINION
77-87

July 19, 1977 (OPINION)

Mr. John T. Paulson
Barnes County States Attorney
Valley City, ND 58072

Dear Mr. Paulson:

This is in reply to your request for an opinion on your question of how Section 57-20-20 N.D.C.C. as amended by the 1974 Legislature should be applied to the facts quoted from your letter as follows:

A taxpayer has paid his 1976 real estate taxes under protest. The only reason that he has given for paying under protest is that he feels that taxes are too high. The question that has been raised is whether or not he must file an application for abatement with the County Commissioners within 60 days after the protest or have his protest be invalid.

It appears to me that the Legislature must have intended 57-20-20 to operate as the procedural step by which a person goes about challenging the taxes that he paid. It seems to me to be short in telling the County Treasurer when the money can actually be turned back into the tax flow without being maintained in a separate fund for a refund of the protest. The County Treasurer is worried about the problem of keeping the money for some statute of limitations period before the County can use it for its operation.

Section 57-20-20 as amended in 1973 and as currently in effect provides as follows:

PAYMENT OF TAX UNDER PROTEST. Any person against whom any tax is levied, or who may be required to pay the same, may pay such tax under protest to the county treasurer, by giving notice in writing to such treasurer at the time of payment, specifying the reasons for such protest, and thereafter, within sixty days, he may apply in writing to the board of county commissioners for an abatement, adjustment, or refund of taxes thus paid, or any portion thereof, and if such application is rejected, in whole or in part, or if the board fails to act upon his application within sixty days, it shall notify the applicant of the disposition of his application and his right to appear to the tax appeals board as provided by law. The application to the board of county commissioners shall show the post office address of the taxpayer and notice to such address by registered or certified mail shall be sufficient service of the notice of rejection or approval of the taxpayer's application.

Section 57-20-21, which also must be considered in answering your request, provides as follows:

SEGREGATION OF TAXES PAID UNDER PROTEST. Whenever taxes have been paid under protest, the county treasurer shall keep money thus paid and collected in a separate fund known as "taxes paid under protest fund" and such moneys shall be paid or disbursed to the state, to any fund of the county, nor to any local taxing district, until the period prescribed in Section 57-20-20 has expired, and in case an action is commenced, the county treasurer shall retain in such fund, until such action shall be finally determined, that part or portion of the tax paid under protest which the plaintiff in his complaint contents is invalid or illegal.

Applying those two Code sections to the question of how long the taxes paid under protest must be kept in the separate protest fund by the county treasurer as provided in Section 57-20-21, it is our opinion that if the taxpayer who paid the taxes under proper written protest does not file an application for abatement and refund with the county auditor pursuant to Chapter 57-32 N.D.C.C. and Section 57-23-05 thereof within sixty days after making the payment under protest to the county treasurer, the county treasurer can immediately after the sixty day period disburse the protested payment from the protest fund to the various funds to which it would have been credited if the payment had not been made under protest.

If a taxpayer who paid taxes under written protest pursuant to Section 57-20-20 does file an application for abatement and refund with the county auditor within the sixty days after he made the payment under proper written protest, the county treasurer must keep the protested payment in the separate protest fund until action on the application is finally determined. Action on the application would be finally determined if the taxpayer failed to appeal the county board's decision on it within the thirty day appeal period prescribed by Section 57-23-08, or when the appeal process is completed if the taxpayer does take a timely appeal from the county board's decision.

We trust that this answers the question you had.

Sincerely,

ALLEN I. OLSON

Attorney General