

**LETTER OPINION**  
**80-143**

March 13, 1980 (OPINION)

Mr. Leo E. Halvorson, Mayor  
Esmond, North Dakota 58332

Dear Mayor Halvorson:

This is in reply to your letter of February 18, 1980, inquiring about the procedure for the sale of real property by the county to a city when there are both special assessments (levied by the city) and delinquent property taxes against it.

The following is quoted from your letter:

It is the opinion of the city; that after three years of the tax sale by county and no redemption or sale is made, that the county should issue a tax certificate to the city.

The Benson County Auditor and Commissioners are of the opinion; that the city must pay all specials plus any other general taxes before a tax certificate can be issued to the city. This past year it was necessary for the city to do this to obtain possession of one tract that we needed for our water plant. (The county auditor then refunded the specials to the city and kept the balance which wasn't much.)

One other example is property known as the Klien Property. It was vacated many years ago with no taxes having been paid since 1965 or 1966. It was advertised for sale by the County Auditor on Dec. 14, 1971. There was no bidder or sale and at that time there was \$105.87 against it which included \$61.57 special assessments by the city. The city has tried continually to obtain possession without paying any of the delinquent taxes, but the Benson County Auditor refuses. This past year the county wants \$380.31. How can Benson County increase taxes on property that was their own after Dec. 14, 1971?

Request your opinion to clarify our differences with the County Auditor's Office to the following questions:

(1) Is there a time when the county auditor should issue a certificate to city without cost for property that has special assessments and general taxes against it?

(2) Years after tax sale (special assessment and general taxes) can the county take such land and use it for county purposes without paying the special assessments to the city.

The answer to your first question is found in the following three sections of the Century Code. section 40-24-01, N.D.C.C., provides that a special assessment lien of a city "shall have precedence over all other liens except general tax liens. . ." As to the city's

right to acquire real property that has been sold to the county for delinquent real estate taxes and special assessments but for which no redemption from the tax sale has been made, sections 40-25-09 and 40-25-10 provide as follows:

40-25-09. PURCHASE OF TAX SALE 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 governing general taxes from the county, the county auditor, at the expiration of the period of redemption, shall issue a deed describing such lands to the municipality. No deed 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.

It is apparent from these statutes that the general tax lien has priority over a city's lien for special assessments. It is also apparent from the first and second sentences of section 40-25-09 that the city has the right to acquire a tax sale certificate to property that was bid in by the county at the county tax sale for delinquent general taxes and special assessments, but although the city will have to pay to the county the amount of the general tax lien in order to get an assignment of the tax sale certificate, it will not have to pay anything to the county for its (the city's) special assessment liens in order to get the certificate.

We do note that section 40-25-03, N.D.C.C., provides that if there is no delinquent general tax against a parcel of real estate and it is sold for special assessments alone that were assessed by a municipality, the county auditor shall declare the property sold to the municipality if there were no private bidders at the sale and shall issue the tax certificate to the municipality. This section, however, has had little, if any, application since the enactment in 1965 of an amendment to section 40-24-16 that provides:

In the event that 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 shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due.

Because of this 1965 amendment to section 40-24-16, property sold by the county at a tax sale would normally be sold for both delinquent general taxes and delinquent special assessments and therefore section 40-25-03 would not apply.

Your second question is:

Years after tax sale (special assessment and general taxes) can the county take such land and use it for county purposes without paying the special assessments to the city.

This question obviously has reference to the third paragraph quoted above from your letter. As we understand the situation, the county treasurer bid the property in for the county at the December 14, 1971, tax sale as required by section 57-24-14, N.D.C.C., because there were no bidders for it. Section 57-24-15 then provides that:

57-24-15. LAND BID IN BY COUNTY TO BE TAXED BUT NOT TO BE SOLD AGAIN. All lands bid in by the county at a tax sale shall be assessed and taxed like other real estate until the period of redemption expires, but shall not be offered again for sale for such subsequent taxes unless the county has made an assignment of its interest in such lands.

Section 57-28-01 provides that:

57-28-01. NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION TO BE GIVEN. On or before June first in each year, the county auditor shall give notice of the expiration of the period of redemption as to all tracts of real estate sold to the county, where three or more years have expired from the date of the original, or any subsequent, tax sale certificates issued or deemed to have been issued to the county, which have not been redeemed or assigned.

As to the property you refer to as the Klien property, it is apparent that under section 57-28-01 the county auditor could have given notice of expiration of the period of redemption for the property in 1975 prior to June first of that year because by that time more than three years had elapsed since the tax sale on December 14, 1971. Apparently the notice was not given then; if it was not, the question is whether the county auditor had the duty to have given it at that time or whether he had, and continues to have, the discretion to postpone giving the notice of expiration of period of redemption from year to year. Although there apparently is no court decision directly on this point, it would seem that section 57-28-01 likely would be regarded as mandatory in nature and that therefore a county auditor would not be regarded as having unlimited discretion to delay giving the notice provided for in that section.

Assuming from the information in your letter that a notice of expiration of period of redemption has not been given under section 57-28-01 for the Klien property, it is clear that neither the county nor the city can obtain a tax deed to the property until the notice is given and the period of redemption expires without redemption being made.

It is also clear from section 40-25-09, quoted above, that as to the Klien property the city has the right under that statute to pay to the county the amount of the general tax liens against the property and obtain tax sale certificates for it without paying to the county the amount of the city's special assessment liens against it. As provided in section 40-25-10, quoted above, and in section 57-27-01, the city could then present to the county auditor the tax sale certificate for each year where more than three years have expired from the date of the sale to which the certificate relates and the county auditor would then give notice of expiration of period of redemption as provided in section 57-27-02 and, if no redemption is made, issue a tax deed to the city as provided in section 40-25-10.

We hope this response will be of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General