

Date Issued: June 22, 1982 (AGO 82-48)

Requested by: Robert W. Holte, Mountrail County State's Attorney

- QUESTION PRESENTED -

Whether an owner of record of a severed mineral interest is entitled to notice of the expiration of period of redemption for surface real estate sold to the county for taxes when the mineral interest was severed prior to the year for which the tax deed proceedings were taken.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an owner of record of a severed mineral interest is not entitled to notice of the expiration of the period of redemption for surface real estate sold to the county for taxes when the mineral interest was severed prior to the year for which the tax deed proceedings were taken.

- ANALYSIS -

Section 57-28-04 of the North Dakota Century Code provides, in part, as follows:

57-28-04. SERVICE OF NOTICE BY REGISTERED OR CERTIFIED MAIL.  
The county auditor shall serve the notice of the expiration of the period of redemption upon the owner of record title of the real estate sold to the county for taxes, and upon each mortgagee, lienholder, and other person interested therein as may appear from the records of the register of deeds and the clerk of the district court of said county. \* \* \*

The severance of mineral interests from the surface realty may be accomplished by a conveyance of the mineral interest or by a conveyance of the surface realty with a reservation or exception as to the mineral interest. Once this has been done, the mineral interest and the surface realty are distinct and separate titles. Each is a freehold estate of inheritance. Beulah Coal Mining Co. v. Heihn, 180 N.W. 787 (N.D. 1920); Northwestern Improvement Co. v. Morton County, 47 N.W.2d. 543 (N.D. 1951); and McGee v. Stokes' Heirs At Law, 76 N.W.2d. 145 (N.D. 1956).

Thus, an owner of record of a severed mineral interest is not entitled to notice pursuant to the provisions of section 57-28-04, N.D.C.C., when the surface real estate is sold to the county for taxes if the mineral interest was severed prior to the year for which the tax deed proceedings were taken.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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