

Office of the Attorney General  
State of North Dakota

Opinion No. 84-34

Date Issued: October 8, 1984

Requested by: James N. Purdy  
Dickey County State's Attorney

--QUESTION PRESENTED--

Whether a deed conveying real property to a trust may be recorded by the county register of deeds without the county auditor's certificate of transfer showing that all delinquent taxes and special assessments have been paid.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a deed conveying real property to a trust may not be recorded by the county register of deeds without the county auditor's certificate of transfer showing that all delinquent taxes and special assessments have been paid.

--ANALYSIS--

Section 11-18-02 of the North Dakota Century Code provides that the county register of deeds 'shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description' unless the instrument contains a certificate of transfer showing that all delinquent taxes and special assessments have been paid or unless it fits within one of the number of exceptions of Section 11-18-03, N.D.C.C.

Section 11-18-03, N.D.C.C., provides as follows:

11-18-03. INSTRUMENTS ENTITLED TO RECORD WITHOUT REGARD TO TAXES.--The following instruments may be recorded by the register of deeds without the auditor's certificate referred to in section 11-18-02:

1. A sheriff's or referee's certificate of sale on execution or on foreclosure of a mortgage.
2. A mineral deed conveying oil, gas, and other minerals in or under the surface of lands.

3. A final decree of distribution or any order terminating joint tenancy or any judgment or decree affecting title to real estate, which must be presented to the auditor's office prior to being placed of record in order to allow the auditor to make such changes in the tax rolls of his office as may be necessary.

4. Any deed conveying to the state, or to any political subdivision or municipal corporation thereof, any right of way for use as a public street, alley, or highway.

The language of Section 11-18-02, N.D.C.C., is clear and unambiguous. If the Legislature had intended to exempt the requirement of the county auditor's certificate on conveyances to trusts, it could easily have so provided. Since a deed conveying an interest in real property to a trust is not listed as an instrument which may be recorded by the county register of deeds without the county auditor's certificate, it is my opinion that a deed conveying real property to a trust is not exempt from the requirements of the county auditor's certificate of transfer specified by Section 11-18-02, N.D.C.C.

--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 questions are decided by the courts.

Robert O. Wefald  
Attorney General

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