

Date Issued: July 11, 1985 (AGO 85-25)

Requested by: Howard D. Swanson
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- QUESTION PRESENTED -

Whether 1985 N.D. S.L. 625 relating to marketable title of real estate acquired by a city after tax deed proceedings, is effective with regard to property acquired by a city prior to the legislation's July 1, 1985, effective date.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that 1985 N.D. S.L. 625 relating to marketable title of real estate acquired by a city after tax deed proceedings, is effective with regard to property acquired by a city prior to the legislation's July 1, 1985, effective date.

- ANALYSIS -

N.D.C.C. sections 57-28-17 and 57-28-19 provide that a city may purchase land held by the county under a tax deed if the real estate is subject to a special assessment imposed by the city. The city may then sell the property for the price it paid plus the amount of the special assessment. The 1985 Legislature passed House Bill 1496 (1985 N.D. S.L. 625) which allows the city to obtain marketable title for the property if certain conditions are met. The purpose of the legislation was to avoid the monetary expense of a quiet title action by permitting the city to sell the property with a clear title.

The effective date for House Bill 1496 is July 1, 1985. N.D. Constitution, Article IV, Section 41. The issue is whether cities may acquire marketable title to property purchased from the county pursuant to N.D.C.C. chapter 57-28 prior to July 1, 1985, by complying with the requirements of the 1985 legislation.

N.D.C.C. section 1-02-10 provides as follows:

1-02-10. CODE NOT RETROACTIVE UNLESS SO DECLARED. No part of this code is retroactive unless it is expressly declared to be so.

However, the North Dakota Supreme Court held the following in paragraph 1 of the Syllabus in Public School District No. 35 v. Cass County Board of Commissioners 123 N.W.2d. 37 (N.D. 1963):

If a statute does not operate retrospectively because it relates to antecedent facts or because part of the requisites of its action is drawn from time antecedent to its passing.

Id. at 38.

Furthermore, like all rules of statutory construction, N.D.C.C. section 1-02-10 is ordinarily ". . . subservient to the rule that the intent and purpose of the legislature should be given effect." *Caldis v. Board of County Commissioners, Grand Forks County* 279

N.W.2d. 665, 669 (N.D. 1979).

If a city has made a special assessment for public improvements against a tract of land and that tract is later forfeited to the county under tax deed proceedings, the city has a right to purchase that tract prior to repurchase by the former owner. N.D.C.C. section 57-28-19.

Allowing a city to obtain marketable title to property acquired prior to the July 1, 1985, effective date for House Bill 1496, does not impair any vested right in the property that could be claimed by the former owner because the statutory authority given to a former owner to repurchase property that has been forfeited in tax deed proceedings is a privilege and is not a vested right in the property. Pederson v. Federal Land Bank of St. Paul 72 N.W.2d. 227, 232 (N.D. 1955).

In addition, in enacting a statute it is presumed that the public interest is favorable over any private interest. N.D.C.C. section 1-02-38(5).

Finally, a review of the legislative history of this legislation reveals that the Legislature clearly intended that the intent and purpose of this legislation was to give a curative effect to the title to property that a city has acquired from a county after tax deed proceedings.

Therefore, it is my opinion that House Bill 1496 as found in 1985 N.D. S.L. 25 relating to marketable title of real estate acquired by a city after tax deed proceedings is effective with regard to property so acquired by a city prior to the legislation's July 1, 1985, effective date.

- EFFECT -

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

NICHOLAS J. SPAETH
Attorney General

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