

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-06

Date issued: February 25, 1994

Requested by: Jeffrey J. Peterson, Bowbells City Attorney

- QUESTION PRESENTED -

Whether a board of county commissioners, in determining the fair market value of property acquired by tax deed and to be sold at the annual November sale, may, in effect, cancel outstanding city special assessments against the property without the permission of the governing body of the city in which the property is located.

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It is my opinion that a board of county commissioners, in determining the fair market value of property acquired by tax deed and to be sold at the annual November sale, may, in effect, cancel outstanding city special assessments against the property without the permission of the governing body of the city in which the property is located.

- ANALYSIS -

N.D.C.C. ch. 57-28 indicates the procedures that must be followed by a board of county commissioners when disposing of property acquired by tax deed. The statutes provide in relevant part:

57-28-10. Appraisal for annual sale - Minimum sale price. All property acquired by the county by tax deed must be appraised by the board of county commissioners at least thirty days before the annual sale under this chapter. The appraised price must be sufficient to cover all taxes, special assessments, homestead credit for special assessments, penalties, interest, and costs which were due against the property at the time of the service of the notice of expiration of the period of redemption, plus an amount equal to the estimated taxes and special assessments for the current

assessment year. If the fair market value of the property is more than the total amount due against the property, the minimum sale price of the property must be at least equal to the total amount due against the property. If the fair market value of the property is less than the total amount due against the property, the board shall fix a fair minimum sale price for the property.

57-28-11. Hearing on appraisal. After making the appraisal of property acquired by tax deed, the board of county commissioners shall set a date for hearing objections to the minimum sale price determined. At least ten days before the hearing, the county auditor shall mail to the auditor of any city, or the clerk of the board of supervisors of any township, in which appraised property is located a written notice stating the time when objections to the established minimum sale price will be heard. Any member or representative of the governing body of any taxing district may appear at the hearing with reference to the fair market value of appraised property, and the board may make appropriate changes in the minimum sale price of property.

57-28-12. Appeal. If dissatisfied with the determination of the board of county commissioners under section 57-28-11, the governing body of any taxing district may appeal to the district court under section 28-34-01. . . . The county auditor shall make any changes in minimum sale price ordered by the court.

57-28-15. Annual sale at auction - Sale price - Terms of payment. The annual sale must be conducted in the following manner:

1. Each parcel of land must be sold at auction to the highest bidder for no less than the minimum sale price as fixed before the sale. The sale may be made either for cash or one-fourth of the purchase price in cash, and the balance in equal annual installments over a period of not more than ten years. The purchaser may pay any or all annual installments with interest

before the agreed due date of the installments.

2. If the sale is for cash, the purchaser shall promptly pay the amount bid to the county treasurer.
3. If the purchase price is to be paid in installments, the purchaser shall pay the first installment to the county treasurer and be given a contract for deed setting forth the terms of the sale. The contract for deed must be executed by the purchaser, the chairman of the board of county commissioners, and the county auditor. The contract must be in a form prescribed by the state tax commissioner. The contract must give the county the right to cancel the contract by resolution and due notice upon default by the purchaser.
4. The original contract for deed must be filed with the county treasurer, who shall record upon it all payments made by the purchaser. The interest rate for the contract must be established by the board of county commissioners at no more than twelve percent.
5. Upon completion of a cash sale or payments under a contract for deed, the county auditor shall execute and deliver a deed conveying to the purchaser the entire interest of the county in the property.
6. Upon the execution and delivery of the deed or contract for deed, the property becomes taxable to the purchaser.

57-28-17. Sale between annual sales. Any property not sold at the annual November sale may be sold by the county auditor at private sale before the next annual November sale for not less than the property's minimum sale price. A parcel of real estate against which an unpaid special assessment continues as a lien under section 57-28-09 may be

sold by the county auditor free of the lien if the governing body of the city in which the property is located finds that the sum of the minimum sale price and the unpaid special assessment exceeds the market value of the property. If the governing body of the city makes this finding, it may cancel all or part of the special assessment lien against the property to reduce the lien to an amount which, when added to the minimum sale price, will be equal to the market value of the property. The action of the governing body shall be certified by the city auditor or clerk to the county auditor. The county auditor may then sell the property at private sale before the next annual November sale for not less than the resulting amount. The purchaser acquires the property free from any part of any lien for special assessment which was canceled by the governing body of the city, and the county auditor shall remove from the record any canceled special assessments.

. . . .

57-28-20. Disposition of proceeds of sales.

All proceeds from the public or private sale of property under this chapter must be apportioned as regular tax payments are apportioned among and within taxing districts in which the property is located, as follows:

. . . .

3. If the property is sold for less than the total amount of the taxes due, the treasurer shall write tax receipts beginning with the earliest year and for as many subsequent years as the proceeds realized from the sale will satisfy, and the remainder of any unpaid general taxes or special assessments must be canceled by the board of county commissioners.

57-28-21. Cancellations from record. After any real estate has been sold and a deed has been delivered to the purchaser, the board of county commissioners shall direct by resolution the cancellation from the record of all general taxes and special assessments remaining of record against

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the property at the date of sale, except installments of special assessments that had not become due at the date of the sale. . . .

The procedure provided in N.D.C.C. ? 57-28-17, authorizing the county auditor to sell property free of a special assessment lien only upon approval of the city governing body, applies to the sale of property between annual sales. Letter from Chief Deputy Attorney General Gerald W. VandeWalle to Mr. Ronald Schwartz (April 26, 1976). N.D.C.C. ? 57-28-17 does not apply to the sale of property at the annual November sale. "If the lots are not sold at the annual sale, the county auditor may not sell those lots between annual sales at less than the established minimum sales price without the approval of the city governing body, as provided in Section 57-28-17." Letter from Chief Deputy Attorney General Gerald W. VandeWalle to Mr. Ronald Schwartz (April 26, 1976).

N.D.C.C. ?? 57-28-10 and 57-28-11 indicate the procedures that must be followed by the board of county commissioners in determining the minimum sale price for property to be sold at the annual November sale. The board of county commissioners must appraise the property to be sold at the annual November sale. The appraised price represents the fair market value of the property. "If the fair market value of the property is less than the total amount due against the property, the board shall fix a fair minimum sale price for the property." N.D.C.C. ? 57-28-10. The county auditor must mail to the city auditor in which the property is located, a notice of a hearing to be held "when objections to the established minimum sale price will be heard. Any member or representative of the governing body . . . [of the city] may appear at the hearing with reference to the fair market value of appraised property, and the board [of county commissioners] may make appropriate changes in the minimum sale price of property." N.D.C.C. ? 57-28-11. "In this manner the city has the right to protect itself against establishing a minimum price too low to cover those unpaid installments of special assessments." Letter from Chief Deputy Attorney General Gerald W. VandeWalle to Mr. Ronald Schwartz (April 26, 1976).

Thus, if the city has objections to the board of county commissioners' determination of the fair market value or the minimum sale price for property located in the city, the city has the option to appear at the hearing to voice its objections. If the city remains dissatisfied with the

determination of the board of county commissioners after the hearing, the city may appeal the matter to district court. See N.D.C.C. ? 57-28-12. N.D.C.C. ?? 57-28-11 and 57-28-12 are the only procedures by which a city governing body may either object to, or appeal, the determination of the fair market value or the minimum sale price, by the board of county commissioners before the annual November sale.

"After any real estate has been sold and a deed has been delivered to the purchaser, the board of county commissioners shall direct by resolution the cancellation from the record of all general taxes and special assessments remaining of record against the property at the date of sale, except installments of special assessments that had not become due at the date of the sale." N.D.C.C. ? 57-28-21. Thus, "once . . . [the minimum sale] price has been established and the lots are sold at the annual sale, those unpaid installments of special assessments which were due as of the date of sale are cancelled, but those unpaid installments of special assessments that were not yet due on the date of sale are not cancelled." Letter from Chief Deputy Attorney General Gerald W. Vandewalle to Mr. Ronald Schwartz (April 26, 1976).

Pursuant to N.D.C.C. ? 57-28-10, a board of county commissioners makes determinations of the fair market value and the minimum sale price of property. If such determinations would result in the inability of a city to recover its outstanding special assessments against the property, and the city either does not voice its objections at the hearing or the board of county commissioners does not revise its minimum sale price after objections are voiced at the hearing, then the unpaid installments of special assessments which were due as of the date of the annual sale at which the property was sold, are cancelled. Thus, it is my opinion that, in the foregoing manner, a board of county commissioners, in determining the fair market value of property acquired by tax deed and to be sold at the annual November sale, may, in effect, cancel outstanding city special assessments against the property without the permission of the governing body of the city in which the property is located.

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- EFFECT -

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

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Leah Ann Schneider
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