

**OPINION  
43-40**

April 13, 1943(OPINION)

COUNTIES

RE: Form of Tax Deed

I have been out of town for several days and upon returning I find your letter of April eighth, in which you enclose a copy of a letter of the E.J. Lander and Company to the auditor of Rolette County, dated March 30, 1943, and a blank auditor's quit claim deed published by the Knight Printing Company number 1575R. The question is whether or not this is the proper deed to be given to a purchaser on contract for deed under Section 19 of Chapter 286 Session Laws of 19041 upon the final payment of the contract by the purchaser, or whether the form of deed should be that provided by Section 15 of Chapter 286 Session Laws of 1941.

It appears to me that there are several different deeds involved. Section 14 of Chapter 286 Session Laws of 1941 provides for the purchase of land by stranger at the annual sale. Section 15 is designated as a county deed and gives the form of the deed conveying the property to the purchaser under Section 14. This form of deed is executed by the chairman of the board of county commissioners and by the county auditor. It is not a tax deed and is nowhere referred to as a tax deed. Section 19 of Chapter 286 Session Laws of 1941 deals with the right of the owner or a successor in interest to repurchase on contract for deed or in cash. The last sentence in the section says that:

Upon the full performance of such contract, the county shall execute and deliver a deed to the purchaser which shall be executed in the same manner as tax deeds and shall have the same legal effect as prescribed by the terms of this Act."

It is true that it says that the county shall execute and deliver a deed, but the word county does not necessarily mean the county commissioners or the county auditor. the county is a legal entity separate from any individuals or any board. The county may do several things through its several officers and whichever officer is empowered to act it is still the act of the county not the act of the individual. There is no legal reason why a deed signed by the auditor is any less the act of a county than a deed signed by other officers of the county. We do have in our statutes a specific form which is called a tax deed. This form is found in Section 2206 Compiled Laws of 1913 and it will be noticed that that form provides that it should be executed by the county auditor alone and the chairman of the board of county commissioners does not join in signing that deed.

My conclusion is that as to contract entered into under Section 14 of Chapter 286 Session Laws of 1941 that the deed given to the purchaser is that prescribed in Section 15 of the same chapter and is called a county deed. As to contract entered into pursuant to Section 19 of Chapter 286 Session Laws of 1941, I believe the form of the deed should be substantially the same and executed in the same manner as the deed entitled a tax deed prescribed in Section 2206 Compiled Laws of 1913. It appears to me that the form which you enclose, and which I am herewith returning to you, is substantially in the form prescribed in Section 2206 although the words "release" and "quit claim" do not appear in the statutory form. As far as the execution and acknowledgment is concerned, I think that it is sufficient if it is executed and acknowledged by the county auditor. We, therefore, believe that if in the instance in question the contract is one which was entered into and governed by Section 19, that the deed enclosed is sufficient and need be executed and acknowledged by the county auditor only. If, however, the contract involved was entered into under section 14 of the chapter above referred to, then we believe that the deed tendered should be in the form prescribed in Section 15 and should be executed by both the chairman of the board of county commissioners and the county auditor.

ALVIN C. STRUTZ  
Attorney General