

**OPINION**  
**45-275**

July 9, 1945 (OPINION)

TAX DEED PROCEEDINGS

RE: County Owned Lands - Redemption - Repurchase

Re: Stutzman v. Smith, 18 N.W.2nd 639

This will acknowledge the receipt of your letter of July 6, 1945. You will find the case of Stutzman v. Smith in the N.W. Reporter Advance Sheet under date of June 13, 1945. Evidently no petition for rehearing was filed for there is no mention of such petition in the opinion.

Reference to your letter requesting our interpretation of the court's decision, in answer to which I mailed you a typewritten copy thereof, discloses that the former owner of the land in question lost it through tax sale proceedings, that is to say, he failed to redeem after notice of expiration of period of redemption had been served upon him, and Foster County thereupon acquired the title to said land. That thereafter the land was appraised at \$300.00 and an insurance company which had had a mortgage on the premises submitted its bid to purchase the land for \$300.00 which bid was accepted by the county.

The question, as I understand it, which bothers your county auditor, is whether or not the former owner may "redeem" by paying the same amount as the bid of the company. If the facts are as I have mentioned, the former owner lost his right to redeem when the county became the owner of the land. His right of redemption terminated when he failed to redeem after notice of expiration had been given and before the county got title to the land.

But the statute has conferred upon the prior owner the right to repurchase. He could have bought the land after the county acquired title by paying "all taxes lawfully assessed or taxed against the land with penalties and interest." (See par. 10 of syllabus, Stutzman v. Smith, supra.) He failed to do this and no one else offered to purchase the premises for an amount which would cover such taxes and penalties. The land was then appraised. The appraisal price was 4300.00. thereupon the insurance company submitted its bid, or offer, to pay that amount and deposited the \$300.00 with your county auditor. Then the county auditor served a notice on the former owner that he could within the thirty day period therein specified purchase the land for said amount, namely \$300.00, and said "owner" thereupon paid the county auditor said amount.

The question which your county auditor desires to have this office answer is whether the former owner has the right to purchase the land by paying the same amount as offered by

the insurance company or whether he is obliged to pay "all taxes lawfully assessed against the land with penalties."

The difficulty that lawyers and county auditors have had with reference to these matters has been due to the terms "redemption" and "repurchase" used interchangeably in the statute. And I must admit that the decision of the Supreme Court in the case of Stutzman v. Smith is not entirely clear. But it is my opinion that the statutes have conferred upon the former owner a prior right to purchase land which he has lost through tax sale proceedings. When the bid of the insurance company to purchase the land for \$300.00 was accepted by Foster County, it became the duty of your county auditor to notify the former owner that he could purchase the land by paying the amount offered by the company but that he would have to do so within the time specified in the notice, but if he paid the county such amount he was, in my opinion, entitled to a deed to the land.

I cannot conceive that it was the intention of the Supreme Court to so construe the statutes that a former owner is not entitled to the same right as a stranger. That certainly was not the intention of the Legislature. It is, therefore, my opinion that the acceptance of the bid of the insurance company was subject to the right of the former owner to "repurchase" for the amount of such bid within the statutory thirty-day period.

NELS G. JOHNSON  
Attorney General