

OPINION
45-285

January 10, 1945 (OPINION)

TAX DEED PROCEEDING

RE: Form of Deed to County

Your letter of January 4 addressed to the attorney general has been received and contents of same have been noted.

You refer to chapter 235 of the Session Laws of 1939, which is an amendment of section 2202 of the Supplement to the Compiled Laws, dealing with the issuance of deeds to the county in tax deed proceedings, and which provides that the county auditor shall issue a tax deed to the county in the same manner as to individual persons. You further call attention to chapter 286 of the Session Laws of North Dakota for 1941 which repeals chapter 235 of the Session Laws of 1939, and which provides that the county auditor * * * shall issue tax deeds in the usual form to the county for all real estate which was not redeemed.

You also submit a form of deed which the county auditor of Dickey County has been using, and you call particular attention to the paragraph therein reciting, among other things, that the undersigned, Albert T. Johnson as county auditor in and for said county of Dickey and State of North Dakota, as party of the first part, in consideration of the premises and in pursuance of the statutes in such case made and provided does hereby transfer, etc.

You state that in your opinion the granting clause should be in the name of the State of North Dakota as grantor, by the county auditor, and that the real grantor is the State of North Dakota and that the statute intends that the conveyance shall be by the state or in the name of the state and executed by the county auditor.

This identical question was before the Supreme Court in the recent case of Buman, et al v. Marian Sturn as Executrix, et al. That was an action brought by the plaintiff to quiet title to a parcel of land purchased from the county, and which the county had acquired through tax deed proceedings. One of the defenses to the action was that the title of the plaintiff was issued by the county auditor as such instead of in the name of the State of North Dakota. In passing upon this particular question, the court said, "The conclusion is inescapable, that where the statute requires the county auditor to issue a tax deed to the county in the same manner as to individual purchasers, such a deed executed by the county auditor as an official of the county, and in the name of the State is void." The court, therefore, held that the deed itself was void, although the title was quieted in the plaintiff on other grounds, and in that connection, the court held that when the period of redemption had expired and the tax deed proceedings up to the expiration of the period of redemption

were in all things regular, the title to the land vested in the county upon the expiration of the period of redemption, and that the issuance of a deed was merely a ministerial act. In other words, the situation is similar to foreclosure proceedings in that when the period of redemption expires, the title vests in the holder of the certificate of sale, and issuance of sheriff's deed is merely a ministerial act.

This office is therefore in agreement with your views that where the county is entitled to a deed in tax deed proceedings, such deed should be executed in the name of the State of North Dakota as grantor. The form for such deed is prescribed in section 2206 of the 1913 Code and in section 57-2706 of the North Dakota Revised Code of 1943.

NELS G. JOHNSON
Attorney General