

**OPINION  
45-287**

February 23, 1945 (OPINION)

TAXES

RE: Not Lien on Original Grant Lands

Re: Tax Deed to SE 1/4 of 16-144-54

The State Land Commissioner has handed me your letter of February 21, re the above, in which you state that the county took tax deed in 1940 for the taxes from 1929 to 1939 inclusive.

This land was original grant school land and was sold to Martha T. Cooley, of Hope, North Dakota, under contract for deed dated March 8, 1916. This contract was canceled by resolution of the board on December 30, 1938, for failure to make payments. This land was resold at public sale to Paul Erickson under contract dated August 25, 1944. I understand from the department that this contract has been paid in full and the department is now ready to issue patent to Mr. Erickson.

I call your attention to section 325 of the Compiled Laws of 1913, which was in full force and effect when this contract was entered into. I call your attention especially to the sentence beginning at the bottom of page 85, which is a part of section 325, and reads as follows:

But no tax deed shall be issued upon any tax certificate procured under the provisions of this section while the legal title to said lands remains in the State of North Dakota."

I also call your attention to section 323 of the Compiled Laws of 1913, which provides that:

No grant or patent for any lands sold under the provisions of this article shall issue until payment in full is made for the same and all terms of the contract of purchase are fully complied with."

I also call your attention to section 320 of the Compiled Laws of 1913, which was in full force and effect when this contract with Martha T. Cooley was made. This section provides:

The fee of each parcel of such lands shall be and remain in the state until the patents hereinafter provided for are issued for the same respectively."

These provisions are carried forward and are now found in sections 15-0815, 15-0816, and 15-0819. It is therefore my opinion that the tax deed issued to your county, as stated in your letter, was absolutely void.

Furthermore, it is my opinion, based upon the opinion of the Supreme Court in the case of State v. Towner County, 68 N.D. 629, 283 N.W. 63, that the taxes for the years mentioned in your letter, with the exception of the taxes for 1939, were canceled by the cancellation of the contract. It is further my opinion that the taxes for 1939 are absolutely void as they were levied while no outstanding contract was in force and while the state held title.

We, therefore, request that you make your certificate showing that there are no outstanding unpaid taxes on this land, so that the department may issue its patent on the contract to Mr. Erickson.

NELS G. JOHNSON  
Attorney General