

**OPINION**  
**46-41**

August 22, 1946            (OPINION)

CITIES

RE: Sale, City Property - 2/3 Vote of Governing Body

Re: Exchange of City Lots for Other Property

Your letter of August 20, re the above, has come to my desk for attention. This office has had several letters of a similar nature from city auditors in the past few months.

Section 40-0501, subdivision 56, authorizes the city to convey, sell, dispose of, or lease personal property and real property of the municipality, as provided by law.

Section 40-1104 provides that a two-thirds vote of all the members of the governing body of a city or of a city operating under the council system of government is necessary for the sale of any property belonging to the municipality.

In considering these matters, we have found no statute other than these relating to the sale of property by the city. However, we have suggested that these various cities by ordinance provide a method for the sale of property. These ordinances should, of course, provide for safeguarding the interests of the city, to see that it gets full value for the property sold or exchanged, and should possibly provide for a sale at public auction, or in some other way to assure the city that it would get full value.

Your problem, however, is somewhat different. If two-thirds of your city council vote in favor of the sale or exchange, I know of no statute, which would prohibit such exchange being made. It would probably be well for the council to adopt a resolution setting forth the situation setting forth the situation and just what it proposes to do in the matter of the exchange.

I could not, of course, pass on the validity of the title of the city to the lots held under the receiver's deed, without having a complete abstract of the title. However, the receiver's deed would transfer all the title held by the bank at the time of the receivership.

As to the question about the necessity for paying the taxes, I will say that there are authorities indicating that when the state or any municipality acquires land on which there are unpaid taxes, the taxes are abated, but since you contemplate transferring this property, it would probably be well to pay the taxes. It is probable that some compromise could be made with the county commissioners and thus secure some abatement in the amount paid. The question of quieting title could be left until the proposed deal is made and then have an understanding that the legion on acquiring title quiet the title if they saw fit.

NELS G. JOHNSON

Attorney General