

OPINION
53-117

December 16, 1953 (OPINION)

TAXATION

RE: Separation Special From General Tax

Your letter of the 11th inst. has come to my desk. Your questions require an answer to the question: Has property owner against whom general taxes and special assessments have both been levied, the right to pay either one or the other without paying both?

It is our opinion that he may pay either one without paying both. This is clearly indicated by the statutes concerned. Section 40-2414 N.D.R.C. provides only that the county treasurer shall collect special assessments as general taxes are collected. It clearly does not provide that both classes must be paid at one and the same time. Chapter 40-25 N.D.R.C. provides specifically the manner of collecting special assessments.

Section 40-2501 provides for the collection by sale of the property in the same manner as for general taxes. Section 40-2502 provides for the sale of property against which there are both general and special assessments delinquent. And Section 40-2503 provides for sale where there are only special assessments delinquent. The only case where there could be only special assessments delinquent would be cases where the general tax had been paid but not the special assessment.

Therefore, it is our opinion that the owner may pay only the general tax if he so desires. You suggest that the county treasurer should, in case of payment by the owner in one year of the general tax only, and the next year the owner again wishes to pay the general tax only, credit such payment upon the special assessment not paid the previous year. This cannot be done, for the taxpayer wished to pay the general tax only. The county treasurer may not tell the taxpayer which tax he must pay first.

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Attorney General