

**OPINION  
60-242**

September 9, 1960            (OPINION)

TAXATION

RE: Foreclosure of Personal Property Tax Lien - Receipts

This is in reply to your opinion request of August 29, 1960.

You state that "The County Auditor of Divide County is foreclosing a tax lien on real property under the provisions of Chapter 32-31 of the North Dakota Revised Code of 1943 and amendments thereto." You go on to observe that "The real estate taxes on the property involved have been paid and the only lien is constituted by personal property taxes which were made lien on said real property by resolution of the County Commissioners pursuant to 57-2221 of the North Dakota Revised Code of 1943."

As you state it, the question to be determined is whether such a foreclosure action is possible where the only taxes involved are personal property taxes which have been made a lien on the real estate pursuant to a resolution of the county commissioners.

You also ask "Who should issue a receipt on these taxes?"

With regard to the first question: We agree with your opinion that "once the County Commissioners have passed a resolution making the personal property taxes a lien on the real estate that they are handled in the same manner as real estate taxes and that a foreclosure of tax lien under chapter 32-31 would be in proper order." As a matter of act, section 57-2222 of the North Dakota Revised Code of 1943 provides that extended personal property taxes may be enforced in the same manner as real estate taxes. Said section reads:

EXTENDED PERSONAL PROPERTY TAXES TO BE COLLECTED WITH REAL ESTATE TAXES. Collection of personal property taxes entered and extended as a lien on real estate may be enforced by the sale of lands against which they are entered at any annual tax sale of such real property for taxes in the same manner as if originally charged against such lands as real estate taxes. The lands to be sold for personal property taxes entered and extended thereon shall be designated by resolution of the board of county commissioners."

As to the matter of foreclosing, under chapter 32-31, the lien of the delinquent personal property taxes, section 32-3101 of the North Dakota Revised Code of 1943, as amended, in part provides that where real estate has been sold at tax sale for general taxes an action may be brought to foreclose the lien of the delinquent taxes. The term "general taxes" is generic and has reference to those taxes which are imposed throughout the state or some civil division thereof for the purpose of raising revenue for the support of the government and for general purposes, and which are levied on the ground of general

public benefits (84 C.J.S., Taxation, Section 3, page 39). The proposition that the personal property tax is a species of the genus known as "general taxes" does not appear to be subject to dispute.

Therefore, assuming that the board of county commissioners passed a resolution declaring that the unpaid personal property taxes constituted a lien on the realty of the delinquent taxpayer (section 57-2221); that said board, having subsequently decided to enforce by sale the collection of said unpaid and extended personal property taxes, by resolution designated the specific realty to be sold at the annual tax sale (section 57-2222); that at such sale said land was struck off to the county; then the county may, as provided by chapter 32-31, bring an action in equity to foreclose the lien of the delinquent taxes.

With regard to the question as to receipts: If the land is sold at tax sale, section 57-2427 provides and requires that the county treasurer shall issue the tax receipt. If the sheriff is able to collect the delinquent personal property tax, section 57-2207 provides and requires that the sheriff shall make four copies of the receipt, retaining one copy for himself and giving one to each of the following: the taxpayer, the county treasurer, and the county auditor.

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