

OPINION
61-39

March 27, 1961 (OPINION)

CITIES AND VILLAGES

RE: Tax Sale - Repurchase of Real Property

This is a reply to your letter of March 3, 1961, requesting an opinion on the question of which fund of a city should be charged with payments made by the city to redeem or to repurchase real property which has been sold by the county for delinquent general taxes only or for both delinquent general taxes and delinquent amounts or installments of special assessments levied by the city against the real property.

It is my opinion that expenditures by a city to redeem or purchase such real property should be made out of and charged to the general fund of the city.

In general, "The city treasurer shall pay out funds appropriated for special purposes only for the purposes for which they were appropriated. . . ." section 40-17-07, N.D.C.C. Consistent with this section are the provisions of section 40-24-18 that:

All special assessments levied under the provisions of this title to pay the cost of an improvement shall constitute a fund for the payment of such cost, and shall be diverted to no other purpose. The treasurer of the municipality shall hold all moneys received for any such fund as a special fund to be applied to payment for the improvement for which the assessments were made. . . ."

With respect to this latter provision the supreme court in *Red River Valley National Bank v. City of Fargo*, 14 N.D. 88, 93, 103 N.W. 390, 391, said:

The money derived from special assessments cannot be diverted to any other use than the payment of the obligation for which the assessment was made. . . ."

It seems clear from the foregoing that redemption or repurchasing of the real property sold by the county at tax sale cannot be made by a city by payment out of any special assessment fund.

It is also clear that our statutes contemplate that a city can redeem or repurchase real property which the county has sold for taxes and against which the city has, or did have, a lien for unpaid special assessments. See sections 57-28-19, 40-25-09, and 40-05-01(60). In fact, under prior law, a city was held negligent and subjected to personal liability to the holder of special assessments warrants for not having lots struck off to it

by the county auditor at a tax sale conducted by the auditor for the sale of both delinquent special assessments and general taxes levied against them. Grand Lodge A.O.U.W. v. City of Bottineau, 58 N.D. 740, N.W. 363.

None of the provisions of 57-28-19, 40-25-09 or 40-05-01(60) indicates what fund of the city should be charged for payment made to redeem from tax sale, or purchase an assignment of a tax sale certificate from the county or purchase real property acquired by a county by tax deed proceedings. Under these circumstances, the applicable law is aptly stated in McQuillin-Municipal Corporation, 3rd Edition, Volume 15, section 39.45, as follows:

Municipal funds are either general or special. Certain claims are payable out of the general funds, and ordinarily general funds may be appropriated by the council to any municipal object."

All lawful obligations of a municipality are payable from its general funds unless the law specifically provides otherwise. Thus, when a municipality is given power to purchase property for some specific purpose, it necessarily follows that the purchase price of such property becomes a charge upon the general fund, in the absence of some special provision calling for payment from some other fund. . . ."

Consistent with the foregoing is the fact that apparently the only instance in which the legislature has provided for payments to be made out of a special fund for purchase of land sold for delinquent taxes is in the case of drainage projects and assessments therefor. See the last sentence of section 61-21-52, N.D.C.C., which provides as follows:

Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain."

It is, therefore, my opinion that a city redeems from tax sale or purchases an assignment of tax sale certificate from the county or purchases a tax deed lot from the county under its statutory right to do so because of unpaid special assessments which had been levied by it against the lot, payments to effect the redemption or purchase must be charged against the general fund of the city.

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