



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
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Drew H. Wrigley
ATTORNEY GENERAL

LETTER OPINION
2023-L-01

Mr. Beau M. Cummings
Ramsey County State's Attorney
524 4th Avenue NE, Unit 16
Devils Lake, ND 58301

Dear Mr. Cummings:

Thank you for your letter requesting an opinion on several issues relating to Ramsey County's annual auction sale of property acquired by the county because of a tax lien foreclosure. Based upon the information provided, it is my opinion that 1) Ramsey County conducted its annual auction sale of property acquired by the county through tax lien foreclosure in accordance with the provisions of chapter 57-28 of the North Dakota Century Code (N.D.C.C.); 2) the county is not obligated to qualify bidders for the auction prior to the auction sale; 3) the county, in this circumstance, does not have an obligation under the law to provide a contract for deed template upon demand and down payment; and 4) the county, in this circumstance, does not have an obligation under the law to have set the interest rate for the contract for deed prior to the beginning of the auction. According to the facts provided, the Ramsey County auction was held in accordance with state law, therefore, it is unnecessary to address the fifth question regarding the steps needed to remedy an improperly conducted auction sale.

FACTS

Your opinion request pertains to Ramsey County's annual auction sale for tax foreclosed properties which occurred on November 15, 2022, "in accordance with the requirements of N.D.C.C. § 57-28-13."¹ The sale was properly noticed, and the properties were properly noticed, foreclosed upon, and appraised in accordance with N.D.C.C. ch. 57-28.²

The annual auction sale was held pursuant to N.D.C.C. § 57-28-15, according to the information provided.³ An individual who bid on properties informed the county auditor that he was an agent of a corporation (hereinafter "the Agent"). The Agent was the successful bidder on two properties.⁴ The Agent made no representation to the County prior to the auction that he intended to purchase the property by contract for deed.⁵ The published notice did not specify whether this was a cash or

¹ Request for Att'y Gen.'s Op. letter dated Dec. 1, 2022, from Beau M. Cummings, Ramsey Cnty. State's Att'y to Att'y Gen. Wrigley.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

contract for deed sale, and the other properties sold that day were sold as cash purchases.⁶ The following day, the Agent returned to the courthouse and indicated he intended to purchase the properties by contract for deed.⁷ The Auditor accepted the one-fourth purchase price down payment, and indicated the State's Attorney would need to draft the agreement for the contract for deed.⁸ Since then, the parties have been engaged in a dispute regarding the procedure of the sale which gave rise to this opinion request.⁹

ANALYSIS

The sale of property acquired by a county by tax deed is governed by N.D.C.C. ch. 57-28. The property must be appraised by the board of county commissioners at least 30 days prior to the annual sale.¹⁰ A minimum sale price of the property is set by adding this appraisal plus the cost of the taxes, special assessments, homestead credit for special assessments, penalties, interest, and costs due against the property.¹¹ The board of county commissioners sets a hearing for objections to the minimum sale price of the property acquired by tax deed.¹² The annual auction sale is held at the county auditor's office or district court in the county on the third Tuesday of November.¹³ Notice of the sale must include a property description, street address, if any, and minimum sale price for each parcel to be sold.¹⁴ Notice must be posted at the county auditor's office at least 15 days before the date of the sale and published once in the official newspaper of the county not less than 10 days before the date of the sale.¹⁵

State law dictates that at the annual sale, each parcel must be sold at auction to the highest qualified bidder for no less than the minimum sale price as fixed before the sale.¹⁶ A highest bidder is unqualified if they owe delinquent taxes to any county.¹⁷ The sale may be either a cash sale or a contract for deed.¹⁸ If the purchase is made by cash, the purchaser must "promptly" pay the

⁶ Email from Beau M. Cummings, Ramsey Cnty. State's Att'y to Allyson M. Hicks, Assistant Att'y Gen. (May 25, 2023, 11:06 AM).

⁷ Request for Att'y Gen.'s Op. letter dated Dec. 1, 2022, from Beau M. Cummings, Ramsey Cnty. State's Att'y to Att'y Gen. Wrigley.

⁸ *Id.*

⁹ *Id.*

¹⁰ N.D.C.C. § 57-28-10.

¹¹ *Id.*

¹² N.D.C.C. § 57-28-11.

¹³ N.D.C.C. § 57-28-13.

¹⁴ N.D.C.C. § 57-28-14.

¹⁵ *Id.*

¹⁶ N.D.C.C. § 57-28-15(1).

¹⁷ N.D.C.C. § 57-28-15(7).

¹⁸ N.D.C.C. § 57-28-15(1).

qualifying amount bid to the county treasurer.¹⁹ If the purchase is paid by a contract for deed, the purchaser must pay the first installment to the county treasurer and be given a contract for deed setting forth the terms of the sale.²⁰ The contract for deed must be in a form prescribed by the state tax commissioner.²¹ The interest rate of the contract for deed must be set by the board of county commissioners at no more than twelve percent.²² Based upon the information provided to my office, the annual sale appears to have been conducted according the above prescripts of state law.

Your second question focuses on whether bidders must be pre-qualified prior to the beginning of the auction. When interpreting a statute, one must first look to the plain meaning of the words used.²³ If the plain language of a statute is clear and unambiguous, the plain language of the statute may not be disregarded under the pretext of pursuing its spirit.²⁴ The statute in question here plainly states the qualification requirement applies to a highest bidder, not a bidder, in general: “[a] person is unqualified to be the *highest bidder* for property if the person owes delinquent taxes to any county.”²⁵ The qualification language plainly applies only to the person or entity eventually deemed the highest bidder, so the requirements for qualification apply at the point of contracting, after the auction sale has occurred and the highest bidder has been identified. This analysis was previously provided by this office in 2005, stating:

Sales by auction result in the formation of a contract between the seller and the buyer. Sales of real property, including county tax sales of real property, must be represented by a written contract signed by both parties. Auctioneers are statutorily authorized to bind the seller and buyer by a written memorandum of the contract if required to make a valid contract of sale But in order to have a valid contract, there must be at least two parties capable of entering into a contract. Individuals who owe delinquent taxes to any county are statutorily unqualified to be the highest bidder at a county tax sale, and are therefore incapable of entering into the sale contract. If the successful bidder at a county tax sale is statutorily incapable of entering into the contract for sale of the land, there is no valid contract.²⁶

The point at which the highest bidder’s qualifications are examined is not prior to the sale, but at the point of contracting. Accordingly, pre-qualification of the bidder prior to the auction is not required, rather the county must make the highest bidder qualification assessment after the auction

¹⁹ N.D.C.C. § 57-28-15(2).

²⁰ N.D.C.C. § 57-28-15(3).

²¹ *Id.*

²² N.D.C.C. § 57-28-15(4).

²³ *Adams Cnty. Rec. v. Greater N.D. Ass’n*, 529 N.W.2d 830, 833 (N.D. 1995); *Burlington N. R.R. v. State*, 500 N.W.2d 615, 617 (N.D. 1993).

²⁴ *Id.*; N.D.C.C. § 1-02-05.

²⁵ N.D.C.C. § 57-28-15(7) (emphasis added).

²⁶ N.D.A.G. 2005-L-39

and prior to entering into any contract regarding the sale of the land. Therefore, it is my opinion that a county need not qualify bidders prior to the start of the auction sale.

The third and fourth questions focus on whether a county is obligated to provide a contract for deed template with a set interest rate to the bidder immediately after the sale.²⁷ The answer to this question focuses on which party determines the format of the sale. A previous Attorney General's opinion determined that the county, not the purchaser, may determine whether real property of the county acquired by tax deed will be sold for cash or through a contract for deed.²⁸ In this case, however, the county did not specify ahead of time whether this was a cash sale or a contract for deed sale. If the county had pre-determined that it was selling the properties as a contract for deed sale, a template contract for deed with a set interest rate would have been established and available upon downpayment. However, in this case, it is clear from the facts the county anticipated this would be a cash sale. Because the county is the party that selects the method of sale, the county was not obligated to accept the offer of a contract for deed sale from the Agent. As was their option, the county worked to accommodate the Agent's request after the sale and developed the contract for deed document, including the applicable interest rate. Under the circumstances in this instance, when the Agent approached and asked to purchase the property by contract for deed, the county did not yet have a template document and the board of county commissioners had not set the interest rate.

There is no legal requirement mandating when the contract for deed document be provided or at what point the interest rate is set. In fact, where the statute indicates that a purchaser must "promptly" pay the amount to the county for a cash sale, there is no similar temporal parameter for contract for deed purchases.²⁹ Because the statute is silent on the issue of timing, it is my opinion that, while a county *may* opt to provide a contract for deed template and interest rate at the time of the sale, it is not required by law to do so.

Pursuant to N.D.A.G. 99-L-63, Ramsey County alone could decide whether it would entertain the Agent's offer to purchase through contract for deed as opposed to cash payment; the county was not required to allow this option, under these circumstances. The county, in entertaining this proposal made by the Agent after the auction sale occurred, did not need to predetermine the issues of the template of the contract for deed or the interest rate.

The county is not obligated to qualify bidders for the auction prior to the auction sale; the county does not, in this circumstance, have an obligation under the law to provide a contract for deed template with the interest rate upon demand and down payment. Therefore, based on the facts

²⁷ Request for Att'y Gen.'s Op. letter dated Dec. 1, 2022, from Beau M. Cummings, Ramsey Cnty. State's Att'y to Att'y Gen. Wrigley.

²⁸ N.D.A.G. 99-L-63

²⁹ See N.D.C.C. § 57-28-15(3) ("[T]he purchaser shall pay the first installment to the county treasurer and be given a contract for deed setting forth the terms of the sale.").

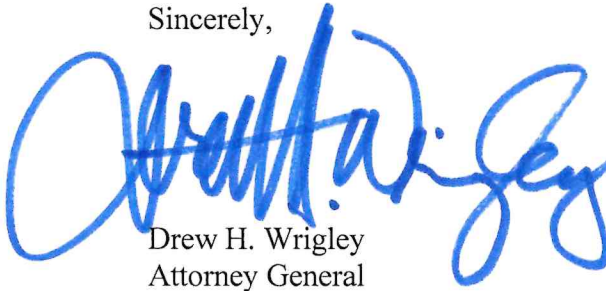
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provided to my office, it is my opinion that Ramsey County conducted its annual auction sale of property acquired by the county through tax lien foreclosure in accordance with the provisions of chapter 57-28 of the North Dakota Century Code.

Sincerely,

A handwritten signature in blue ink, appearing to read "Drew H. Wrigley". The signature is fluid and cursive, with the first name "Drew" being particularly prominent.

Drew H. Wrigley
Attorney General

AMH/meo

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.³⁰

³⁰ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).