

**OPINION
61-234**

May 15, 1961 (OPINION)

TAXATION

RE: Cities and Villages - Notice of Right to Purchase

This is in reply to your letter of April 18, 1961, requesting an official opinion from this office construing that part of section 57-28-19 of the North Dakota Century Code relating to the right and notice thereof of a city or village or town to purchase a lot held by the county under tax deed prior to the right of the former owner to repurchase it if there are delinquent and unpaid special assessments against it.

You state that in the question before you, Burke County holds a tax deed to a lot in the city of Powers Lake because of the nonpayment of general taxes and special assessments, which lot was appraised last fall, prior to the annual sale, by the board of county commissioners, as required by section 57-28-10, for the amount of the general taxes and special assessments less interest and costs. The city of Powers Lake was notified of the appraisal pursuant to section 57-28-11 and made no objection to the appraisal. Notice of the annual sale by the county of real estate held by it under tax deed was also posted and published as required by section 57-28-14.

Since the annual sale last fall a third party has offered to buy the lot and the county auditor, pursuant to section 57-28-18 sent the former owner the thirty-day notice of his prior right to repurchase the lot.

The only notice given to the city of Powers Lake was the notice of appraisal required by section 57-28-11 and the posted and published notice of the annual sale required by section 57-28-14. The thirty-day notice to the city provided for in section 57-28-19 was not given. However, the county auditor feels that the notices given under sections 57-28-11 and 57-28-14 were sufficient to apprise the city of its prior right to purchase the lot and that since it did not do so within thirty days of those notices it cannot now do so and thus prevent the former owner from repurchasing.

It is the opinion of this office that the city of Powers Lake was not notified of its right to purchase as required by section 57-28-19 and that until such notice is given the thirty-day time within which the city may exercise its right does not begin to run and its right to purchase is not terminated until the thirty-day period following the notice has expired.

Section 57-28-19 provides in part as follows:

The former owner, his executor or administrator, or any member of his immediate family, shall have the right to repurchase all real estate forfeited to the county under tax deed proceedings, so long as the tax title thereto remains in the county.

However, in the event any city, town or village has theretofore made a special assessment for public improvements against any such tract, piece or parcel of land, which special assessment has become delinquent and remains unpaid, such city, town or village shall have a right to purchase for cash, at the appraised value, prior to that of the former owner. The county auditor of any county, immediately upon appraisal of such property shall give notice thereof to the auditor of any such city, town or village and such city, town or village shall have thirty days within which to purchase said property." (Emphasis supplied).

The underlined language in the above statute was added to the section by Chapter 305 of the 1945 Session Laws. Prior to this 1945 amendment, it appears that the only rights that a city or village had with respect to real estate sold for delinquent and unpaid special assessments made by it were:

- 1) The right to buy at the annual sale of delinquent real estate taxes and special assessments. See chapter 40-25, section 57-24-17 together with sections 1-01-08 and 57-02-01(5), and Grand Lodge, A.O.U.W. v. City of Bottineau, 58-ND 740, 227 N.W. 363.
- 2) The right after the annual tax sale to purchase tax sale certificates held by the county on real property against which there are special assessment tax liens in favor of the municipality. See section 40-25-09 and also section 57-27-07.
- 3) The right to redeem from tax sale. See section 57-26-01. Also see section 57-26-02 together with sections 57-02-01(5) and 1-01-28.

Prior to the 1945 amendment to section 57-28-19 it appears that if a tax deed to real estate was issued to the county, the city or village thereafter had no right paramount or prior to that of the former owner to acquire that real estate, although the board of county commissioners, if it chose to do so, could transfer the real estate to "any municipality for park and recreational purposes." See section 11-27-08 and Bloomdale v. Rutland, 74 N.D. 651, 24 N.W.2d. 38.

The only right the city or village had in a case where the county held a tax deed was to be notified under section 57-28-11 of the right to object to the appraisal made by the board of county commissioners under section 57-28-10 of the real estate the county acquired by tax deed. That notice of right to object was not in any way a right in the city or village that was prior to the right of the former owner to repurchase; instead, it apparently was intended as a protection to the city's or village's share in the net proceeds from the sale of the real estate (57-28-20) by giving the city or village an opportunity to object to the minimum sales price set by the county board. See Horab v. Williams County, 73 N.D. 754, 758, 19 N.W.2d. 649, 651.

None of the foregoing was changed by the 1945 amendment to section

57-28-19. That amendment provided a new right in a city or village, the right to purchase certain tax deed land held by the county, which right is prior to the right of the former owner to repurchase provided it is exercised within the thirty-day period specified in the notice from the county auditor.

While no cases have been found which construe this 1945 amendment to section 57-28-19, there would seem to be little doubt that the right of a city or village to purchase under this provision is analogous to the right of the former owner to repurchase before the real estate can be sold at private sale under section 57-28-17. As such, this right in the city or village to purchase would therefore not be "an interest in real property but merely a privilege which the Legislature may grant upon such terms as it deems advisable." *Schule v. Reule*, 72 N.W.2d. 225, 226, 227. It "is in the nature of an option." *Pederson v. Federal Land Bank of St. Paul*, 72 N.D.2d. 227, 232.

While such a right should not be viewed with the same strictness that applies to the termination of the owner's equity of redemption, it "is nevertheless a valuable one and cannot be ignored. Substantial compliance with statutory procedure is necessary in order to terminate that right and until it has been terminated the right continues to exist." *Knowlton v. Coye*, 76 N.D. 478, 490, 37 N.W.2d. 343, 351.

In the problems you have presented the county auditor did not give the notice specified by section 57-28-19 to the city of Powers Lake, which notice should have been given "immediately upon appraisal of such property." This provision for immediate notice differs from the provision for notice to the city for hearing on the appraisal under section 57-28-11 is not "immediately upon appraisal" but must be "at least ten days previous" to the date set by the board of county commissioners for hearing objections to the appraisal.

If the Legislature had intended that the notice of the date set for hearing objections to the appraisal under section 57-28-11 and the posted and published notice of the annual sale under section 57-28-14 should be sufficient notice of the right of the city under section 57-28-19 to purchase the real estate, it does not seem that it would have expressly provided for another notice to the city to be given "immediately upon appraisal of such property." This provision of section 57-28-19 for immediate notice to the city or village auditor is, it seems, a legislative recognition that many officials of cities and villages might not be aware of the prior right of the city or village under section 57-28-19 to purchase even though as a general rule everyone may be presumed to know the law.

Accordingly, it is the opinion of this office that there was not substantial compliance with the requirement for notice under section 57-28-19 to the city of Powers Lake and that therefore its right to purchase the lot in question prior to repurchase by the former owner has not been terminated.

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