

N.D.A.G. Letter to Rohrich (Dec. 20, 1990)

December 20, 1990

Mr. F. C. Rohrich
Emmons County State's Attorney
P.O. Box 657
Linton, ND 58552

Dear Mr. Rohrich:

Thank you for your November 16, 1990, letter, wherein you inquire whether a purchaser of land from the State of North Dakota, acting through the Commissioner of University and School Lands, is subject to the payment of taxes on the land which became delinquent prior to foreclosure by the Bank of North Dakota.

Your letter states that the mortgage in question was foreclosed on real estate which was owned by Gary S. Gefroh, Route 1, Box 96, Hague, North Dakota 58542. I have been informed by a representative of the Bank of North Dakota that this mortgage was taken to secure an investment of the permanent school fund of the state and that the Bank of North Dakota brought the foreclosure action as agent for the Board of University and School Lands.

When the State acquires land on a foreclosure of a mortgage given to secure a loan from the funds from the permanent school fund, or when the State cancels a contract to sell land held by the Board of University and School Lands because the vendee defaulted, all unpaid taxes are cancelled. State v. Griggs County, 10 N.W.2d 245 (N.D. 1943); State v. Divide County, 283 N.W. 184 (N.D. 1938); or State v. Towner County, 283 N.W. 63 (N.D. 1938). Also see the enclosed copy of 1986 N.D. Op. Att'y Gen. 163.

N.D.C.C. 57-29-02 provides as follows:

57-29-02. Reinstatement of tax liens upon sale. Upon the sale of tracts of land held by the said trustee for the state of North Dakota, and upon payment to him of not less than twenty percent of the sale price of the particular tract or tracts sold, the provisions of section 57-29-01 shall become inoperative with respect to such lands, and the general statutory remedies to enforce and effectuate tax liens and titles again shall be applicable.

However, this provision applies only to a mortgage taken by the Bank of North Dakota under the power conferred upon it to make real estate loans under the "Real Estate Bond Series" of state bonds, now codified as N.D.C.C. ch. 54-30. N.D.C.C. § 57-29-02 is a legislative enactment of the holding of the supreme court in State v. Burleigh County, 212 N.W. 217 (N.D. 1927).

It is my opinion that under applicable case law all unpaid taxes on Mr. Gefroh's land were cancelled upon foreclosure of the mortgage and the issuance of a sheriff's deed to the State. Therefore the unpaid taxes are not enforceable against a subsequent purchaser from the State.

Sincerely,

Nicholas J. Spaeth
Attorney General

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