

OPINION
42-113

August 8, 1942 (OPINION)

TAXES

RE: Extinguishment of by transfer of title to State

Re: Auditor's Notation of Tax Record of Taxes Extinguished by Transfer to State.

I have your letter of August 8th, in which you state that you have procured a number of rubber stamps, to be used by auditors in making notation on the tax records where taxes have been extinguished by a passing of title to the state on account of mortgage given to secure loan of school funds. This rubber stamp is as follows: "Taxes Extinguished by transfer to state of North Dakota, to settle a State Land Department Trust Fund Loan."

In the case of State vs. Divide County, 68 North Dakota at page 708, at page 719, the court said:

"The moment, therefore, that title to this land vests in the state, the land itself becomes a part of the school fund. As such, it cannot be subject to taxation in any form. It seems clear, therefore, that in such case, and with reference to taxes becoming due after the mortgage lien attached, all liens obtained on the sale of the land for such delinquent taxes are extinguished as against such land."

It is my opinion, therefore, that when the state acquires title, either by sheriff's deed on foreclosure, or by quit claim deed given under permission of statute, in lieu of foreclosure, the lien of all taxes assessed against the land after the mortgage lien attached, is extinguished. Thereafter, such taxes are not liens against the land and cannot be collected under any circumstances.

This situation is not one calling for an abatement of the tax. It does not come within any of the provisions of the abatement law, and clearly the county commissioners have nothing whatever to say in the matter. It is merely a question of annotating the tax records, so that the particular item of tax may be shown to have been extinguished. This is primarily for the auditor's own benefit, so that this item may not be thereafter in the absence of annotation, taken to be a collectible tax item. It is my opinion, therefore, that each county auditor should make an annotation in substance like that of the rubber stamp referred to in your letter, and that it would be a matter of convenience for the auditor to use such rubber stamp in making the annotation.

As a matter of convenience to the auditor, it would, in my opinion, be well for him at the time the transfer is entered on the sheriff's deed or the quit claim deed, transferring title to

the state, in these cases to make the annotation concurrent with the entering of the transfer. This will save him checking his records and making the annotation later.

ALVIN C. STRUTZ
Attorney General