

LETTER OPINION
99-L-63

July 26, 1999

H. Jean Delaney
Assistant Barnes County State's Attorney
230 4th Street NW Room 301
Barnes County Courthouse
Valley City, ND 58072-2947

Dear Ms. Delaney:

Thank you for your letter asking whether North Dakota Century Code (N.D.C.C.) § 57-28-15 grants the county discretion to determine whether it will sell land acquired by tax deed for cash, or for cash and installments, or whether the purchaser may make that decision.

The annual sale by the county of land acquired by tax deed is held in November of each year. N.D.C.C. § 57-28-13.

The annual sale must be conducted in following manner:

1. Each parcel of land must be sold at auction to the highest bidder for no less than the minimum sale price as fixed before the sale. The sale may be made either for cash or one-fourth of the purchase price in cash, and the balance in equal annual installments over a period of not more than ten years. The purchaser may pay any or all annual installments with interest before the agreed due date of the installments.
2. If the sale is for cash, the purchaser shall promptly pay the amount bid to the county treasurer.
3. If the purchase price is to be paid in installments, the purchaser shall pay the first installment to the county treasurer and be given a contract for deed setting forth the terms of the sale. The contract for deed must be executed by the purchaser, the chairman of the board of county commissioners, and the county auditor. The contract must be in a form prescribed by the state tax commissioner. The contract must give the county the right to cancel the

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contract by resolution and due notice upon default by the purchaser.

4. The original contract for deed must be filed with the county treasurer, who shall record upon it all payments made by the purchaser. The interest rate for the contract must be established by the board of county commissioners at no more than twelve percent.
5. Upon completion of a cash sale or payments under a contract for deed, the county auditor shall execute and deliver a deed conveying to the purchaser the entire interest of the county in the property.
6. Upon the execution and delivery of the deed or contract for deed, the property becomes taxable to the purchaser.

N.D.C.C. § 57-28-15 (emphasis added). This statute is ambiguous in that it is not clear whether it is up to the county or the purchaser to determine whether the real property will be sold for cash, or for cash and installments.

The legislative history of N.D.C.C. § 57-28-15 provides no insight on this issue. There are no North Dakota court cases or attorney general opinions addressing this issue. However, state law provides that "[i]n enacting a statute, it is presumed that . . . [the] [p]ublic interest is favored over any private interest." N.D.C.C. § 1-02-38. State v. Silseth, 399 NW 2d 868, 872 (N.D. 1987). The public interest would favor leaving it up to the county to determine whether the real property will be sold for cash, or for cash and installments.

Therefore, it is my opinion that the county, and not the purchaser, may determine whether real property of the county acquired by tax deed will be sold for cash, or for one-fourth of the purchase price in cash and the balance in equal annual installments.

Sincerely,

Heidi Heitkamp
Attorney General

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