

**LETTER OPINION
2014-L-13**

September 11, 2014

Mr. Jacob T. Rodenbiker
McKenzie County State's Attorney
201 5th St NW Ste 550
Watford City, ND 58854-7129

Dear Mr. Rodenbiker:

Thank you for your letter requesting my opinion regarding whether a county's "control" of a dissolved city's real property allows the county to sell the property.¹ For the reasons stated below, it is my opinion that the meaning of the word "control" is too ambiguous to conclude that it encompasses the sale and transfer of the real property of a city dissolved by petition.

ANALYSIS

You indicate that McKenzie County acquired control of real property the city of Rawson had owned when it dissolved pursuant to a petition and election in 2002. The county is now contemplating selling some of that property.

State law provides that a city may be dissolved in two ways: by petition and a majority vote of the electors, or by a district court upon application of the county state's attorney.²

When a city is dissolved pursuant to a petition and a majority vote of the city's electors, as Rawson was, "the board of county commissioners shall assume control of all property belonging to the dissolved city and shall employ a qualified person to manage and operate the property and to collect all charges due from the operation of such property."³ State law also provides that the money received from the operation of the property, if not needed to pay employees to operate the property or to pay bonded indebtedness, shall be deposited in the county's general fund.⁴

The dissolution statute does not specifically provide that the county may sell or transfer the real property of a dissolved city.⁵ The legislative history of the chapter relating to dissolution of

¹ The county may transfer property pursuant to N.D.C.C. ch. 11-27.

² See N.D.C.C. ch. 40-53.1.

³ N.D.C.C. § 40-53.1-07 (emphasis added).

⁴ See N.D.C.C. § 40-53.1-08.

⁵ See N.D.C.C. § 40-53.1-07.

cities⁶ does not provide insight on this issue. Also, there are no North Dakota Supreme Court cases or Attorney General opinions that specifically address this issue.

A review of the alternative process in N.D.C.C. ch. 40-53.1, whereby a district court dissolves a city, provides insight on whether the county's control of a dissolved city's real property allows the county to sell the property. State law provides that if the district court finds that a city should be dissolved, the court shall order the sale of the city's assets, including any real property and, after the payment of debts, any surplus monies are to be deposited in the county's general fund.⁷ The fact that the court could order the sale of a dissolved city's real property suggests that, when the petition and election process is used, it would be prudent to have the district court approve any subsequent sale by the county.

In enacting a statute, a reasonable result is intended.⁸ Therefore, it would be unreasonable to conclude that the real property could never be sold, and since the county has control of the property, the county is the logical entity to have the authority to sell the property. However, without a clear meaning of "control," the county may not be able to convey good title to a buyer. Thus, because a court order is required for disposition of assets under the judicial method for dissolution of a city, a court order authorizing the sale of the assets of a city dissolved by petition would also be prudent.

In conclusion, it is my opinion that although a county has the general authority to buy and sell real property, there is insufficient authority for me to conclude that a county's "control" of a dissolved city's real property allows the county to convey good title.⁹ It is my further opinion, however, that the term "control" as used in N.D.C.C. § 40-53.1-07 affords the county color of title sufficient to pursue a quiet title action on property affected by the statute in question.

Sincerely,

Wayne Stenehjem
Attorney General

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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.¹⁰

⁶ N.D.C.C. ch. 40-53.1.

⁷ See N.D.C.C. § 40-53.1-13.

⁸ See N.D.C.C. § 1-02-38.

⁹ This result is consistent with N.D.A.G. 2003-L-58, which found that the dissolved city did not hold title to the real property, but did not address whether the county had good title.

¹⁰ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).