

**LETTER OPINION
93-L-317**

November 4, 1993

Mr. Doug Mattson
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Doug:

Thank you for your September 21, 1993, letter wherein you inquire whether the transfer of property by the issuance of a tax deed under North Dakota Century Code (N.D.C.C.) ? 57-28-09 is an involuntary act.

N.D.C.C. ?? 57-28-08 and 57-28-09 provide in pertinent part as follows:

57-28-08. Effect of failure to redeem. The failure of the owner, any mortgagee, or other lienholder to redeem property bid in by the county before the period of redemption expires operates:

1. To pass any interest of the owner, mortgagee, or lienholder in the property to the county. . . .

. . . .

57-28-09. Tax deed to be issued. After the expiration of the period of redemption for property that was sold to the county for taxes, and which has not been assigned or redeemed, the county auditor shall issue a tax deed to the county. . . .

(Emphasis supplied.) The word "shall" as used in statutes is generally mandatory and is only interpreted as permissive when necessary to give

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effect to legislative intent. In Interest of Nyflot, 340 N.W.2d 178, 182 (N.D. 1983); State v. McMorrow, 332 N.W.2d 232, 234 (N.D. 1983); Northwestern Bell Telephone Company v. Wentz, 103 N.W.2d 245, 254 (N.D. 1960).

In giving effect to the above-quoted provisions from N.D.C.C. ? 57-28-09, there is no reason to deviate from the general rule that the word "shall" is mandatory. Thus, it is my opinion that the transfer of property by the issuance of a tax deed under N.D.C.C. ? 57-28-09 is an involuntary act.

40 CFR ? 300.1105(a)(1) specifically includes such transfers within the definition of involuntary acquisition of property by the government for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). See also, 42 U.S.C. ? 9601(35)(A)(ii).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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