

**LETTER OPINION**  
**95-L-15**

January 26, 1995

Mr. Brian D. Grosinger  
Assistant State's Attorney  
210 Second Avenue NW  
Mandan, ND 58554

Dear Mr. Grosinger:

Thank you for your letter asking whether N.D.C.C. § 57-22-03 allows a sheriff to collect unpaid delinquent mobile home taxes, or distrain property to pay those taxes, without first obtaining a judgment or execution. If so, you also ask whether this procedure violates due process. See U.S. Const. amend. XIV, § 1; N.D. Const. art. I, § 12. It is my opinion that this method of collecting taxes is authorized by N.D.C.C. § 57-22-03 and is constitutional.

Your letter refers to the collection of mobile home taxes imposed under N.D.C.C. ch. 57-55. The provisions in N.D.C.C. ch. 57-22 for collecting delinquent personal property taxes also apply to the collection of delinquent mobile home taxes. See N.D. Admin. Code § 81-02.1-01-10.

N.D.C.C. § 57-22-03 provides in part:

The county treasurer, on the fifteenth day of October, shall deliver the list of unpaid delinquent personal property taxes to the sheriff of his county, who immediately shall proceed to collect all such taxes, and if they are not paid upon demand, he shall distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same with penalties and costs.

(Emphasis added.) This statute "requires the sheriff to immediately proceed to collect such taxes, and to distrain and sell the property upon which the taxes are delinquent at public vendue." Chicago, M. & P. S. R. Co. v. Bowman County, 153 N.W. 986, 988 (N.D. 1915) (emphasis added).

Words in a statute should be given their ordinary meaning, N.D.C.C. § 1-02-02, and the word "immediately" is defined as

"[w]ithout intermediary," "directly," or "[w]ithout delay." The American Heritage Dictionary 643 (2d coll. ed. 1991). Therefore, I conclude that the word "immediately" in N.D.C.C. ? 57-22-03 means that a sheriff shall collect the taxes or distraint property to pay them as soon as the list of delinquent taxes is provided, without first obtaining a judgment or execution. The question then becomes whether this summary collection procedure is constitutionally permitted.

"Due process requires notice and a meaningful opportunity for a hearing appropriate to the nature of the case." Powell v. Hjelle, 408 N.W.2d 737, 738 (N.D. 1987), citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 438 (1982). Mobile home owners must apply every year for a tax permit from the county director of tax equalization. N.D.C.C. ? 57-55-01.1. The cost of each permit, or amount of tax, is based on the director's assessment of the value of the mobile home. N.D.C.C. ? 57-55-04. An owner may challenge this assessment pursuant to the procedures in N.D.C.C. ch. 57-23. N.D.C.C. ? 57-55-04.1. If denied relief by the county commissioners, the owner may appeal the decision to the district court. Id.

In addition, N.D.C.C. ? 57-55-03 informs mobile home owners when their taxes are due and become delinquent. Notice of this provision must be displayed in the office of every mobile home dealer and in every mobile home park or lot. N.D.C.C. ? 57-55-08. If a mobile home owner has not paid the tax, the county director of tax equalization will give the owner "a warning that if such person fails to comply within ten days after the issuance of such warning, the director of tax equalization may begin civil action against such person." N.D.C.C. ? 57-55-11. Although N.D.C.C. ? 57-55-11 does not expressly require that this warning be given before property is distrained and sold under N.D.C.C. ? 57-22-03, its purpose would be defeated if a sheriff could distraint and sell a taxpayer's property before the warning was given. Harmonizing these two statutes, I believe that the warning required in N.D.C.C. ? 57-55-11 must be given before the taxpayer's property is distrained and sold under N.D.C.C. ? 57-22-03, as well as before other civil action is taken.

All of these proceedings would take place before the county director of tax equalization notifies the sheriff that mobile home taxes are delinquent and, therefore, before the sheriff

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could distraint and sell the taxpayer's property under N.D.C.C. ? 57-22-03.<sup>1</sup> Thus, a taxpayer is given ample notice and opportunity to question the validity of the assessment of such taxes before they are collected. Compare Sniadach v. Family Finance Corporation of Bay View, 395 U.S. 337 (1969) (no notice or hearing prior to garnishment); Garrison Memorial Hospital v. Rayer, 453 N.W.2d 787 (N.D. 1990) (attachment). Consequently, I conclude that N.D.C.C. ? 57-22-03 does not violate due process. This office previously reached the same result regarding taxes on general personal property. See Letter from Attorney General Helgi Johanneson to Gerald Haga (November 3, 1969).

"The phrase 'due process of law' does not necessarily mean a judicial proceeding." Palmer v. McMahon, 133 U.S. 660, 668 (1890). Over due process objections, the United States Supreme Court has repeatedly held that the distraint of personal property is an appropriate summary procedure for collecting unpaid delinquent taxes. Scottish Union and National Ins. Co. v. Bowland, 196 U.S. 611, 632 (1905) (citing cases).

The mode of assessing taxes in the States by the Federal government, and by all governments, is necessarily summary, that it may be speedy and effectual. By summary is not meant arbitrary, or unequal, or illegal. It must, under our Constitution, be lawfully done.

But that does not mean, nor does the phrase "due process of law" mean, by a judicial proceeding. The nation from whom we inherit the phrase "due process of law" has never relied upon the courts of justice for the collection of her taxes, though she passed through a successful revolution in resistance to unlawful taxation.

McMillen v. Anderson, 95 U.S. 37, 41 (1877). The distraint of personal property for unpaid delinquent taxes is "purely an executive process to collect the tax after the liability of the party was finally fixed." Palmer, 133 U.S. at 669.

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<sup>1</sup>As the official responsible for determining whether mobile home taxes are paid or delinquent, it would be the county director of tax equalization who notifies the sheriff of any delinquent mobile home taxes collected under N.D.C.C. ? 57-22-03, not the county treasurer.

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N.D.C.C. ? 57-22-03 allows a sheriff to collect unpaid delinquent mobile home taxes, or distrain property to pay those taxes, without first obtaining a judgment or execution. Taxpayers have notice and an opportunity to be heard before this summary procedure is used, and the United States Supreme Court has held that it does not violate due process. Therefore, I conclude that the statute is constitutional.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

jcf/vkk