

**OPINION**  
**51-139**

January 5, 1951           (OPINION)

PROPERTY

RE:   Pretended Title

You have called to the attention of this office the fact that quit claim deeds procured from former owners of lands to which counties have taken title under tax sale proceedings are being presented to Register of Deeds for record, and are being used as a basis for a demand upon the purchasers of such land from the counties for rentals from the time of their purchase and also as a basis for actions to quiet title in the holders of such quit claim deeds.

You indicate that many such purchasers of tax acquired lands had paid money demanded by the holders of such deeds to avoid suits and that other purchasers of such lands are apprehensive that like demands may be made upon them.

You have asked our opinion as to the rights of such purchasers in order that such apprehension may be allayed and that unjust demands for money cannot be made.

We call your attention to section 12-1713 NDRC 1943, which reads as follows:

"BUYING LAND WHEN TITLE SUBJECT OF CONTROVERSY; MISDEMEANOR. Every person who takes any conveyance of any lands or tenements, or of any interest or estate therein, from any person not in the possession thereof, while such lands or tenements are the subject of controversy by suit in any court, knowing the pendency of such suit, and that the grantor was not in possession of such lands or tenements, is guilty of a misdemeanor."

We also call your attention to section 12-1714 which reads as follows:

"BUYING PRETENDED TITLES; MISDEMEANOR. Every person who buys or sells or in any manner procures, or makes or takes any promise or covenant to convey any pretended right or title to any lands or tenements, unless the grantor thereof or the person making such promise or covenant has been in possession, or he and those by whom he claims have been in possession of the same, or of the revision and remainder thereof, or have taken the rents and profits thereof, for the space of one year before such grant, conveyance, sale, promise, or covenant is made, is guilty of a misdemeanor."

You will note that the above named sections made it a misdemeanor to buy or sell quit claim deeds to lands where the seller has not been in possession for a period of one year immediately prior to the sale or purchase.

We call your attention to section 47-0603 which reads as follows:

"TITLE TO REAL PROPERTY; ADVERSE POSSESSION. A title to real property, vested in any person who shall have been in the actual open adverse and undisputed possession of the land under such title for a period of ten years and who shall have paid all taxes and assessments legally levied thereon, shall be valid in law."

From the last quoted section you will note that after actual possession for ten years as provided in said section, any defect in the tax proceedings is cured and any quit claim deed from the former owner would in all cases be invalid and void.

Further, our Supreme Court has held that such purchases are champertous and such deeds are void. See the case of Robertson vs. Brown, 75 N.D. 109 and also the case of Sailer vs. Mercer County, 75 N. D. 123 and many other cases therein cited.

This office, therefore, holds that if there is a general purchasing of quit claim deeds as you describe, the men purchasing such deeds are guilty of a misdemeanor and the matter should be laid before the state's attorneys of the counties in which such misdemeanors are committed.

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Attorney General