

N.D.A.G. Letter to Mattson (Oct. 3, 1991)

October 3, 1991

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

Dear Mr. Mattson:

Thank you for your September 10, 1991, letter concerning the interpretation of N.D.C.C. § 11-18-03 when a deed is presented for filing at the register of deeds office but lacks the required auditor's certificate. Specifically, I understand that you are concerned with whether the Ward County Register of Deeds may refuse to receive any instrument lacking the required auditor's certificate, or whether the register of deeds can receive such instrument and refuse to record it until it has the auditor's certificate.

N.D.C.C. § 11-18-02 provides:

Register of deeds not to record certain instruments unless they bear auditor's certificate of transfer. Except as otherwise provided in section 11-18-03, the register of deeds shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent taxes and special assessments or installments of special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments or installments of special assessments have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes.

Id. (Emphasis added.)

In its ordinary sense, the word "or" is a disjunctive particle used to express an alternative or to give a choice of one among two or more things. State v. Silseth, 399 N.W.2d 868, 870 (N.D. 1987); Tennefos v. Guaranty Mutual Life Co., 136 N.W.2d 155, 157 (N.D. 1965).

Because of the context of N.D.C.C. § 11-18-02, I believe that our Legislature intended to express alternative requirements. When this rule of alternative interpretation is applied to N.D.C.C. § 11-18-02, the following result is achieved. N.D.C.C. § 11-18-02 directs the register of deeds to refuse to record any deed "unless there is entered thereon a

certificate of the county auditor" and also directs the register of deeds to refuse to receive any deed on this same basis. Because the language of N.D.C.C. § 11-18-02 is directive in nature, the register of deeds must follow and comply with each alternative. A different interpretation would cause an unusual result. For example, the register of deeds could not record a deed without the county auditor's certificate unless she first received that instrument. Further, any contrary interpretation of N.D.C.C. § 11-18-02 would be inconsistent with Collins v. Federal Land Bank of St. Paul, 119 F.2d 228, 229 (8th Cir. 1941), holding that "a deed to real estate cannot be recorded until all the taxes on the property have been paid."

I trust that this answers your inquiry.

Sincerely,

Nicholas J. Spaeth

jfl