

N.D.A.G. Letter to Gallagher (Dec. 16, 1991)

December 16, 1991

Mr. Richard P. Gallagher
Mandan City Attorney
P.O. Box 1176
Mandan, ND 58554

Dear Mr. Gallagher:

Thank you for your September 10, 1991, letter wherein you inquire whether a city may abate or suspend the procedures governing the enforcement of the collection of delinquent special assessments.

A city is an agency of the state and has only the powers expressly conferred upon it by the legislative branch or those powers which may be necessarily implied from the powers expressly granted. Further, when defining a city's powers, the rule of strict construction applies. Any doubt as to the existence or extent of the powers must be resolved against the city. N.D. Const. Art VII, 2; Roeders v. City of Washburn, 298 N.W.2d 779, 782 (N.D. 1980).

A city has the power to create improvements by the special assessment method set out in N.D.C.C. ch. 40-22. Megarry Bros. v. City of St. Thomas, 66 N.W.2d 704, 709 (N.D. 1954).

A city certifies its special assessments to the county auditor and they are paid to the county treasurer. If the county treasurer receives less than the full amount of taxes and special assessments due at any time, the payment must be allocated between taxes and special assessments in proportion to the respective amounts which are then due. Special assessments are not subject to abatement or refund proceedings under N.D.C.C. ch. 57-23. N.D.C.C. § 40-24-16. Special assessments are subject to the same penalties and interest that are added to delinquent general taxes. N.D.C.C. §§ 40-24-17 and 57-20-01.

Real property is sold to enforce the collection of delinquent special assessments at the same time and in the same manner as is provided in N.D.C.C. ch. 57-24 for the sale of real property for delinquent general taxes. N.D.C.C. § 40-25-01.

If real property is sold to enforce the collection of general taxes and special assessments, those amounts must be advertised and sold together in one sum and one certificate is issued. If no one bids on the property, the county auditor must strike off the parcel of land to the county and one certificate of sale covers both delinquent general taxes and delinquent special assessments. N.D.C.C. § 40-25-02.

In conclusion, a city cannot abate or suspend the procedures governing the enforcement of the collection of delinquent special assessments because there is no express or implied statutory authorization to do so. Further, because N.D.C.C. § 40-24-16 requires payments to be allocated on a pro rata basis between taxes and special assessments, and because N.D.C.C. § 40-25-02 requires that when property is sold for delinquent taxes and special assessments it must be sold in one sum with one certificate issued, a taxpayer cannot pay only the delinquent taxes and enter into a payment agreement with a city to defer or abate delinquent special assessments. Finally, because the provisions which impose penalties and interest on delinquent special assessments do not authorize a city to waive or reduce them, they cannot be forgiven. N.D.C.C. §§ 40-24-17 and 57-20-01. Murie v. Cavalier County, 278 N.W. 243, 247 (N.D. 1938).

I trust that this answers your inquiry.

Sincerely,

Nicholas J. Spaeth

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