

**OPINION
68-314**

January 25, 1968 (OPINION)

Mr. Dale H. Jensen

State's Attorney

Burleigh County

RE: Taxation - Special Assessments - Allocation Between Taxes and Sp

This is in reply to your letter, which reads as follows:

"This is a request for an opinion under section 40-24-16, as amended, in the Century Code. This section states, in effect, that wherein the County Treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, he shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due.

"The question then arises as to whether or not personal property taxes, which become a lien on real estate under section 57-22-21, should be included in the proration by the County Treasurer."

Section 40-24-16, as amended, of the North Dakota Century Code, states in part:

"* * * In the event that the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, he shall allocate the amount of such payment between taxes and special assessments in proportion to the respective amounts of taxes and special assessments which are then due. * * *."

We are assuming that the personal property taxes have become a lien on the real property. The statute when it refers to "taxes" makes no distinction between personal property and real estate taxes.

It is our opinion that the taxes referred to in section 57-22-21 would be taxes within the purview of section 40-24-16 and, therefore, should be included in the proration by the County Treasurer.

HELGI JOHANNESON

Attorney General