

**OPINION  
69-178**

November 3, 1969        (OPINION)

Mr. Gerald J. Haga

Assistant State's Attorney

Grand Forks County

RE: Garnishments - Collection of delinquent personal property tax -

This is in reply to your letter of October 27, 1969, in which you enclose a letter dated September 9, 1969, from Mr. Tom Kotowski, Tax Deputy in the County Sheriff's Office, concerning garnishments to enforce collection of delinquent personal property taxes. Mr. Kitowski's question is apparently whether, in view of the recent United States Supreme Court decision declaring unconstitutional certain garnishment statutes. (See *Sniadach v. Family Finance Corporation*, 23 L.Ed. 2d. 349, 89 S.Ct.). The county sheriff may proceed with garnishment proceedings to collect delinquent personal property taxes.

This office, subsequent to the issuance of that decision on June 9, 1969, issued an opinion dated July 8, 1969, in which it was concluded the North Dakota garnishment statutes, as found in Chapter 32-09 of the North Dakota Century Code, were unconstitutional insofar as they permitted the freezing or seizing of property without first having given the debtor-defendant an opportunity to be heard and have the matter adjudicated. The opinion also concluded that garnishment proceedings in aid of execution of a judgment were not invalid since a judgment necessarily infers the defendant had been given an opportunity to be heard or was heard and thus due process was met.

With regard to the collection of delinquent personal property taxes, section 57-22-06 of the North Dakota Century Code provides:

SHERIFF MAY USE OTHER PROCESS. If a person charged with a personal property tax has not sufficient property which the sheriff can find to distrain to pay such tax, but has moneys or credits due him or coming to him from any person, corporation, governmental agency, municipality, or from this state, known to the sheriff, or if such taxpayer has removed from this state, and has property or moneys or credits due him or coming to him in this state, known to the sheriff, the sheriff shall collect such personal property taxes and penalties by garnishment, attachment, distress, or other process of law, and such remedy is in addition to any other remedy provided by law."

There is, of course, no doubt but that a judgment for the payment of delinquent personal property taxes may be secured and garnishment used to aid in execution of such a judgment. The statutes governing the collection of delinquent personal property taxes contemplate that action may be instituted to collect delinquent personal property taxes and a judgment obtained. See sections 57-22-24 and 57-22-31 of the North Dakota Century Code. However, these statutes also made it

obvious that the Legislature did not intend that a judgment be secured before garnishment proceedings could be instituted. See section 57-22-06, quoted above.

Insofar as the constitutionality of proceeding with garnishment to collect delinquent personal property taxes prior to securing a judgment is concerned, we do not believe the decision of the United States Supreme Court, referred to above, is applicable. According to section 57-20-01 of the North Dakota Century Code, as amended, all personal property taxes become delinquent on the first day of March following the first day of January following the year for which such taxes were levied. Prior to that time the taxpayer is given ample opportunity to question the validity of the assessment of such taxes. See chapter 57-23 of the North Dakota Century Code, as amended. The procedure outlined in that chapter and other pertinent chapters such as 57-11 governing city board of equalization and 57-09, governing township board of equalization, permit the taxpayer to make application to the local board of equalization for correction of the assessment. If he is denied at the local level he may make application for correction to the county commissioners. If he is denied relief at that level he may appeal the decision to the District Court. All of these proceedings take place prior to the time the personal property taxes become delinquent and, therefore, prior to the time any garnishment action could be instituted. There is ample opportunity for the taxpayer to be heard prior to the time garnishment proceedings are instituted.

We do not believe garnishment proceedings used by the sheriff to collect personal property taxes fall within the purview of the decision of the United States Supreme Court in *Sniadach v. Family Finance Corporation*, cited above.

In summary, it is our opinion that the sheriff may proceed with garnishment proceedings to collect delinquent personal property taxes prior to securing a judgment for the payment of such taxes without violating the constitutional rights of the taxpayer.

HELGI JOHANNESON

Attorney General