

Office of the Attorney General
State of North Dakota

Opinion No. 81-104

Date Issued: October 6, 1981

Requested by: Jerald L. Engelman, Mayville City Attorney

--QUESTION PRESENTED--

Whether unpaid annual installments of city special assessments spread against lots in 1980 in a platted addition to a city can be collected if the lot owners and developers vacate pursuant to Section 40-50-20 of the North Dakota Century Code, the portion of the plat that included those lots.

--ATTORNEY GENERAL'S OPINION--

It is the Attorney General's opinion that where there are unpaid annual installments of city special assessments spread against lots in 1980 in a platted addition to a city, the vacating of the portion of the platted addition that includes those lots would not prevent the collection of the unpaid special assessments against them.

--ANALYSIS--

Section 40-24-01, of the North Dakota Century Code, provides in part that:

'40-24-01. LIEN OF SPECIAL ASSESSMENTS--ATTACHES ON APPROVAL OF ASSESSMENT LIST SUBJECT ONLY TO GENERAL TAX LIEN. A special assessment, together with all interest and penalties which accrue thereon, shall be and remain a lien upon the property upon which the assessment is levied from the time the assessment list is approved by the governing body until the assessment is paid in full. Such lien shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale. . . .'

Chapter 40-25, N.D.C.C., provides for collection of special assessments and includes Section 40-25-01 which is as follows:

'40-25-01. SALE OF REAL PROPERTY TO ENFORCE COLLECTION OF DELINQUENT SPECIAL ASSESSMENTS. Real property shall be sold to enforce the collection of special assessments which have become delinquent at the same time and in the same manner as is provided in title 57, Taxation, for the sale of real property for delinquent general taxes. The sale shall be made by the same officer and upon like

notice and subject to the same provision in relation to redemption, and the same record thereof shall be kept by the officer making the sale as in the case of the sale of real property for delinquent general taxes.'

As Section 40-24-01, N.D.C.C. quoted above states, the special assessment is a lien on the property on which it was levied 'until the assessment is fully paid', and as provided in Section 40-25-01, N.D.C.C., quoted above, the lien is enforceable by sale of the assessed property in the same way as collection of delinquent real estate taxes on the property is enforced. We find nothing indicating that the lien for unpaid special assessments could be lost or destroyed by the vacating of a portion of the plat that includes lots to which the special assessment liens attached.

According to the information furnished, at least some of the lots in question have different owners. They therefore will have to be separately assessed for real estate tax purposes; but if the portion of the plat that includes them is vacated so that the legal descriptions provided by the plat no longer exist, the county auditor will no doubt have to provide a county auditor's plat for taxation purposes only, as provided in Section 57-02-39, N.D.C.C. See *Frandsen v. Mayer*, 155 N.W.2d 294, 297 (N.D. 1967). Such a county auditor's plat for taxation purposes would apply for both real estate taxation and special assessment lien purposes.

Section 40-50-20, N.D.C.C., provides for vacating a plat of any addition to a city both before and after lots in the plat have been sold. This section must be considered together with Sections 40-50-21 through 40-50-25, N.D.C.C., and in particular, Section 40-50-24, N.D.C.C., when only part of a plat is vacated. In this instance where the city has levied special assessments against some or all of the lots in the portion of the plat that would be vacated, it appears that the city may have acquired 'rights and privileges' as that term is used in Section 40-50-24, N.D.C.C., which it presumably would not want to have abridged or destroyed by vacation of part of the plat, at least not without its express consent. In this regard see *City of LaMoure v. LaSell*, 145 N.W. 577, 582 (N.D. 1914). Also see such cases as *City of Jamestown v. Miemietz*, 95 N.W.2d 897, 902 (N.D. 1959); and *Hille v. Nill*, 226 N.W. 636 (N.D. 1929).

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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