

Date Issued: June 19, 1981 (AGO 81-66)

Requested by: John F. Burke, Walsh County State's Attorney

- QUESTION PRESENTED -

Whether the provisions of section 47-19-06 of the North Dakota Century Code prohibit a register of deeds from recording a death certificate unless either a certified copy of an order of a county court or a statement of the State Tax Commissioner relating to the estate tax determination has been recorded if the decedent had a life estate which was created by someone other than the decedent.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the provisions of section 47-19-06, N.D.C.C., prohibit a register of deeds from recording a death certificate unless either a certified copy of an order of a county court or a statement of the Tax Commissioner relating to the estate tax determination has been recorded if the decedent had life estate which was created by someone other than the decedent.

- ANALYSIS -

The North Dakota Supreme Court held long ago that a register of deeds is a ministerial officer. Rising and Isaacs v. Dickinson, 121 N.W. 616 (N.D. 1909). The authority of ministerial officers is to be strictly construed. Youngblood v. United States, 141 F.2d. 912 (Sixth Cir. 1944).

76 C.J.S. Register of Deeds Section 10, at page 514, states:

Generally, the duty of the register is to receive and file, or receive and record, as the case may be, such instruments, and only such instruments, as by law are entitled to be filed or recorded, and to file or record them in such manner as to serve all the purposes of the law.

Section 47-19-06, N.D.C.C., provides, in part, that whenever the termination of any life estate is concerned, a death certificate can only be recorded by a register of deeds if ". . . there has been recorded a certified copy of an order of a county court or a statement of the state tax commissioner relating to estate tax determination of said decedent's estate."

The language of section 47-19-06, N.D.C.C., is clear and unambiguous. In addition, state law provides that the letter of the law ". . . is not to be disregarded under the pretext of pursuing its spirit." Section 1-02-05, N.D.C.C. Also see sections 1-02-02 and 1-02-03, N.D.C.C.

Thus, even though it is understood that federal and North Dakota law provide that there is no transfer subject to estate tax with respect to the termination of a life estate that was not

created by the life tenant (see IRC Section 2036 and section 57-37.1-04, N.D.C.C.), the language of section 47-19-06, N.D.C.C., prohibits the register of deeds from distinguishing particular kinds of life estates upon their termination.

Accordingly, no life estate may be terminated by the recording of a death certificate without complying with the provisions of section 47-19-06, N.D.C.C.

- EFFECT -

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

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