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Digests of Attorney General Opinions

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Laws of 1913). It is obvious that the statute controls and neither the county nor its auditor can deviate from its requirements and in so doing make a valid contract. The purchaser at a sale of land sold pursuant to the statute, must take notice of its terms. (*Deckter v. Sheridan County*, 72 N. D. 607, 10 N.W.2d 485; *Rommick v. Wagner*, 77 N. D. 120, 41 N.W.2d 170). It has been further held that where there is a specific statute which prescribes the manner of sale of property acquired by a county by tax title proceedings, such statute is controlling and a sale not made in conformity with such statute is void. (See *Dazey v. Barnes County*, 70 N. D. 752, 298 N.W. 13).

The purported contract for deed to Sherven being void, no interest in the land in controversy was assigned to the defendants, consequently, the defendants were not at any time persons who were entitled to redeem from the tax sale.

The defendants contended that the 1940 tax title was void because the county auditor failed to serve the notice of expiration of the period of redemption upon them or their predecessors at a time when such interests were shown of record in the office of the register of deeds. Court deemed it unnecessary to consider this contention in the light of the provision in the purported contract for deed which specified "that no sale, transfer, assignment or pledge of this contract, or any interest therein or of or in the premises therein described shall be in any manner binding on the seller unless said seller shall first consent thereto by writing endorsed hereon."

DIGESTS OF ATTORNEY GENERAL OPINIONS

COUNTY OFFICIALS — DUTIES AND RESPONSIBILITIES OF Opinion of October 5, 1956

County board chairman and county auditors are justified in refusing to sign contracts and to release funds approved by a majority of the board of county commissioners where the chairman and auditor are officially advised by the states attorney that the appropriations may be held to be illegal.

County board chairman and auditor *may* be held personally liable for moneys released or obligations assumed where they have been officially advised by the states attorney that such release or assumption may be illegal.

Diebold Safe & Lock Co. v. Getchell, 3 N. D. 243; McDermott v. Dinnie, 6 N. D. 278; Miller v. Leach, 33 N. D. 513; Dept. of Highways v. Baker, 69 N. D. 702; State *ex rel.* Johnson v. Baker 74 N. D. 244 (held *contra*, where advice of Attorney General not given).

Authority of states attorney is analogous to authority of Attorney General whose opinions are binding upon state officials, who request such opinions, until reversed by judicial decision.

McDermott v. Dinnie, *supra*.

N. D. Rev. Code § 54-1201 (1943) (duties of Attorney General); Dept. of State Highways v. Baker, *supra*.

N. D. Rev. Code § 11-1601 (1943) (duties of states attorney).

Continuing activities of majority of board contrary to official advice of states attorney need not be reported to administrator of State Bonding Fund.

MOTOR VEHICLES — OPERATION OF BY MINORS Opinion of October 22, 1956

Under Chapter 251 of the 1955 Session Laws of North Dakota a child between 14 and 16 years of age may drive an automobile without any restrictions if he has received a valid license from the commissioner. The only restrictions that apply to a child in this age group are as provided by Section 16 of the 1955 Session Laws as follows:

“The provision of this section shall not authorize the child to drive a motor cycle, commercial truck, motor bus, or taxicab.” The conditions precedent to receiving a license issued by the commissioner concerns only the eligibility of the child to receive a valid license. Once the child between 14 and 16 years of age has satisfied the commissioner that he deserves a license under the restrictions of the law, and the license is thereafter issued on that basis, then the child is subject only to the restrictions that he cannot operate a motor cycle, commercial truck, motor bus or taxicab.

A child 14 years or under, is subject to the restrictions as listed in subsection 4 of section 16, chapter 251, 1955 Session Laws. Restrictions not expressly listed in that law are not applicable to the child younger than 14 years of age.

OIL AND GAS — EFFECT OF FORECLOSURE ACTION
ON SEVERED MINERAL RIGHTS

Opinion of October 3, 1956

Where the minerals are severed, either by mineral deed, mineral lease or transfer of royalty, the same is separated from the title to the surface and must be taxed separately, and an assessment on the surface interest does not affect the severed minerals that have not been removed from the land.

Bilby v. Wire, 77 N.W.2d 882; *McGee v. Stokes' Heirs at Law*, 76 N.W.2d 155; *Smith v. Cook*, 73 N.W.2d 151; *Corbett v. LeBere*, 68 N.W.2d 213; *Ulrich v. Amerada Petroleum Corp.*, 66 N.W.2d 397; *Petroleum Exchange Inc. v. Poynter*, 64 N.W.2d 718; *Northwestern Improvement Company v. Morton County*, 47 N.W.2d 543.

STATUTES — COMPENSATION OF PHYSICIAN FOR EXAMINATION
OF PERSON PRIOR TO INSANITY BOARD HEARING

Opinion of November 8, 1956

A physician is entitled to a reasonable amount of compensation for services rendered for examination of person prior to insanity board hearings, which would be in addition to what he would receive as a member of the board if he happens to be the same person.

N. D. Rev. Code § 25-0301.

TORTS — DAMAGE TO CROPS CAUSED BY SPRAYING

Opinion of October 16, 1956

Chapter 203, Session Laws of 1955 is not applicable when a crop owner is bringing an action against a person whom the crop owner himself has hired to spray his crop, but only when the action is being brought by other persons who have sustained damage by the spraying. Otherwise the person bringing the action would have to serve himself which of course does not make sense.

UNEMPLOYMENT COMPENSATION—EMPLOYER'S SUPPLEMENTAL
BENEFITS

Opinion of October 22, 1956

Employer's provision for supplemental benefits where employee is entitled to state unemployment compensation are *additional*

benefits which do not authorize pro rata deduction from state unemployment compensation payments.

Deductions from employees' wages to provide trust res for paying employer's supplemental benefits are not taxable under Unemployment Compensation Act.

N. D. Rev. Code § 52-0101 (21) (22) (Supp. 1953).