



1957

## Digest of Attorney General Opinions

North Dakota Law Review

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make the contract one of life insurance. (2) Since it is life insurance the "incontestability" statute applies, it being a continuous policy of insurance which was renewed annually for longer than the contestable time. (3) In North Dakota the incontestability statute has been held to apply to policy "exceptions". (4) The air travel rider, since it was not in the form required by statute, did not apply because the insurer could not rely on it to contest the policy. Therefore it was concluded that the insured's death was not an expected risk.

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### DIGEST OF ATTORNEY GENERAL OPINIONS

#### COUNTY COMMISSIONERS — AUTHORITY TO COMPROMISE CLAIMS

December 4, 1956

Where a county has filed a claim against the estate of a party who was a patient at the State Hospital for a number of years up to his death, the Board of County Commissioners does not have the authority to compromise such claim when a compromise would take away money due the State Charitable Institution Fund.

See Section 25-0825 of N. D. R. C. (1943).

#### COUNTY OFFICERS — CORONER REQUIRED TO BE QUALIFIED ELECTOR OF COUNTY WHERE APPOINTED

December 7, 1956

References in Chapter 115 of the 1955 Session Laws to the "office of coroner", and to a county coroner as an "officer", have extended prior statutory enumerations of county officers to include the office of coroner. Therefore, a coroner is a "county officer" within the terms of N. D. Rev. Code § 11-1004 (1943) and is required to be a qualified elector of the county from which he is appointed.

N. D. Constitution, Sec. 173.

#### GAMBLING DEVICES—SALES PROMOTION PRACTICE CONTRARY TO LAW

January 7, 1957

Where merchandise is offered for sale at usual price with a further right of the prospective purchaser to obtain various discounts up to 100% by breaking a balloon and reading the amount of discount from a paper which had been inserted in the balloon, such sales promotion practice possesses the three essential elements of a gambling device: chance, consideration, and reward, and is therefore contrary to the statutes of North Dakota.

JUDGMENT — FILING OF THE TRANSCRIPT OF JUDGMENT IN A COUNTY  
OTHER THAN THAT WHERE ORIGINAL ACTION  
AND JUDGMENT FILED  
February 5, 1957

Under the provisions of Sections 28-2015, 28-2013, and 28-2011 of the 1943 revised Code, an affidavit of identification is required on the filing of the transcript of the judgment in a different county, just as it was on the filing and docketing of the original judgment in the county where the judgment was obtained. The words "entered and docketed" when referring to judgments in North Dakota are synonymous and it is not the customary or ordinary practice of the clerk of court to include the information required in the affidavit of identification under section 28-2013 as a part of the transcript of the judgment. Section 28-2015 requires that no judgment for the recovery of money against any person shall be docketed or entered until the judgment and the affidavit of identification has been filed with the clerk of the district court.

OIL AND GAS — RECORDATION OF CONVEYANCES WITHOUT AUDITOR'S  
CERTIFICATE OF TAXES PAID  
November 26, 1956

North Dakota Revised Code of 1943, section 11-1802 requires that a register of deeds refuse to record a conveyance unless it shall be accompanied by a certificate of the county auditor stating that all taxes have been paid; or if the conveyance offered for recordation is a tax deed from the county, that the tax sale price paid shall have satisfied all taxes and assessments due at the time of the sale. However, mineral deeds are specifically exempted from such requirement by Chapter 114 of the 1955 Session Laws and North Dakota Revised Code of 1943, section 11-1803. Mineral deeds, oil and gas leases, and royalties should be recorded without such auditor's certificate.

OIL AND GAS — REGULATIONS OF WELLS DRILLED FOR SOLE PURPOSE  
OF DISPOSING OF PRODUCED WATER  
December 4, 1956

A well for the sole purpose of disposing of produced salt water does not fall within the terms of Section 38-0805 of the 1953 Supplement to North Dakota Revised Code of 1943 and a permit to drill such a well is not required under the provisions of that statute. The only instance in which the Commission would have authority to govern the drilling of wells for the sole purpose of disposing of

produced salt water, would be where the commission would deem it necessary to promulgate and enforce rules, regulations and orders, to carry out the intent of chapter 38-08 of the 1953 Supplement and such authority arises under subsection 5 of Section 38-0804 of the 1953 Supplement to the North Dakota Revised Code of 1943.

STATUTES — DEVICES AUTHORIZED TO CHECK SPEED  
OF MOTOR VEHICLES  
January 17, 1957

Section 4 of Chapter 239, North Dakota Session Laws of 1955 which authorizes the use of radiomicro waves or other electrical devices to check the speed of motor vehicles and the acceptance of such findings as prima facie evidence of speed, along with the authorization granted to municipalities in section 40-0501 of the 1953 Supplement to the North Dakota Revised Code of 1943 as amended in 1955 by Chapter 254, allows a municipality to utilize electrical traffic timer devices but only after adopting an ordinance to that effect.

STATUTES — LABOR DISPUTES  
November 21, 1956

In a labor dispute before the Labor Dispute Board, under the provisions of section 34-1005 of the 1953 Supplement to the North Dakota Revised Code of 1943, if an election is requested by either party to the dispute, the board must comply with such request. The language in the above noted statute is mandatory and not merely discretionary.

STATUTES — MEANING OF THE WORDS UNITED STATES  
December 14, 1956

The words "United States" as they appear in section 12-5601 of the North Dakota Revised Code of 1943 include only the forty-eight states of the Union and cannot be construed so as to include Alaska, Hawaii, Puerto Rico, The District of Columbia or any of the territories and dependencies that are to be understood in their ordinary sense, unless a contrary intention plainly appears.

TAXATION — TAXES ON FARM BUILDINGS WITHIN CITY LIMITS  
ON UNPLATTED GROUND  
December 18, 1956

A farm structure is exempt from taxation under section 57-0208 (15) of the North Dakota Revised Code of 1943 when such property is located on land which lies within the city limits, but not on

regularly platted land. The above quoted statute provides that all farm structures, and improvements located on agricultural lands shall be exempt from taxation unless such structures are not used or intended for use as a part of farm plant, or as a farm residence.

*Eisenzimmer v. Bell*, 75 N. D. 733, 32 N.W.2d 891 (1948).

TAXATION — REAL ESTATE TAXES UNENFORCEABLE AGAINST UNITED STATES AS OWNER THOUGH VALIDLY ASSESSED WHILE UNDER NON-EXEMPT OWNERSHIP  
November 19, 1956

Where real estate taxes were validly assessed against land held by non-exempt owner on April first assessment date; and such land is sold to the United States prior to following January first due date of such assessment, (which is the time which such taxes become a lien on the property); such assessment is not enforceable against the non-exempt vendor, because real estate taxes when due become a lien against the particular property taxed and are not a personal charge against the owner. Neither is a tax lien for taxes due enforceable against the United States, because, in absence of the consent of the United States, a state court is without jurisdiction to enforce a sale of land for unpaid taxes on federally owned land.

*Gaar, Scott & Co. v. Sorum*, 11 N. D. 164, 169, 90 N.W. 799, 801 (dictum); *United States v. 909.30 Acres of Land*, 114 F. Supp. 756, 758 (dictum); N. D. Rev. Code §§ 57-0241, 57-2001 (1943); *Hertzer v. Freeman*, 12 N. D. 187, 189, 96 N.W. 294, 296.

TOWNSHIP BOARDS — AUTHORITY TO REMOVE OBSTRUCTIONS FROM PUBLIC HIGHWAYS  
December 27, 1956

Township boards do not have authority to remove branches from landowner's trees which overhang a public highway established by prescription where they obstruct the passage of a house being moved on such highway. Such use of a public highway is not public, but private. However, township boards have such authority where overhanging branches obstruct the ordinary public travel on such highway.

*Rutten v. Wood*, 79 N. D. 436, 57 N.W.2d 112; *Northwestern Telephone Exchange Co. v. Anderson*, 12 N. D. 585, 98 N.W. 706; *Commonwealth v. Bayard*, 200 Mass. 175, 86 N.E. 285.