OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 27, 1939

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. O-423
Re: Whether owner of land sold for taxes and purchased by State may be allowed to redeem the same after the expiration of the redemption period of two years after sale.

We are in receipt of your letter of March 21, 1939, wherein you outline the following facts:

"The State foreclosed its tax lien against John Doe, the record owner of certain land in Bee County. After due notice of sale the Sheriff offered the land for sale at public auction, but no bidder appearing the County Attorney bid the same in for the State and the Sheriff executed a tax deed conveying the property to the State. The Sheriff failed to make any further offers of sale of this land. Five years after the date of the Sheriff's sale the original owner of the land offers to pay to the Tax Collector of Bee County all the tax, penalties and interest due against the land."

You request our opinion in response to the following three questions:

"1. Is the Tax Collector authorized to receive the money for the taxes and issue a redemption certificate therefor?

"2. Is the Comptroller authorized to approve a redemption certificate for payment of these taxes?

"3. If so, does such redemption certificate divest the title to the property in the State back to the original owner?"

Redemption under Article 7283, Civil Statutes, may be had as a matter of right if exercised within two years after the purchaser's deed is filed for record.

Article 7284b of the Revised Civil Statutes allows redemption as a matter of right only if exercised within two years from the date of sale.

Article 7328, Civil Statutes, outlining the proceeding to follow in tax suits, provides that if any land so sold and purchased by the State is not redeemed within the time prescribed by law, the sheriff "shall sell the same at public outcry to the highest bidder for cash at the principal entrance to the courthouse in the county wherein the land lies" after due notice. It is provided that the sheriff shall send the amount received from such sale to the State Treasurer after deducting the amount of the county taxes, interest and penalty of the county tax which he shall pay to the county treasurer.

Presented differently, the question is whether the county tax collector and comptroller, prior to any sale by the sheriff, can waive the sale and accept the taxes, penalties and interest.

In the case of League vs. State, 57 S.W. 34, Sup. Ct., affirmed 22 S.C. 475, land had been sold for taxes for 1884 and bid in by the State. Thereafter, the State brought suit against another claimant for such 1884 taxes, as well as others thereafter assessed against the land. Recovery was allowed, it being held that the State in so doing waived its rights acquired under the sale.

In State vs. Hutely, 278 Pac. 206, the Supreme Court of New Mexico held that so long as rights of other parties did not intervene it was within the power of the county treasurer, as the agent of the State, to permit redemption, although the period allowed as a matter of right had expired.

In Schreiber vs. Moynihan, 47 A. 851, the Supreme Court of Pennsylvania held that a purchase at a tax sale by the county was abandoned by it where the land was not thereafter charged by the commissioners with county and road taxes, as provided by its law, but was assessed as before and sold for the taxes so assessed.

In Sigman vs. Lundy, 6 So. 245, by the Supreme Court of Mississippi, an Act of 1875 providing that the State would abandon all claims under its pre-existing tax titles if the owners would pay the taxes for 1874; and in default of payment provision being made

for a resale of said lands, it was held that where the State had bought lands for taxes in 1867, and again bought the same land in 1875 for the 1874 taxes, it abandoned, by the act of purchase in 1875, all claim to the land under its purchase of 1867.

In 61 C.J. 1253, it is said that redemption may be allowed, although the time has expired, on equitable grounds, as where the State, city or county consents to the redemption and accepts the money with that understanding.

The statutes relating to the collection of delinquent taxes, foreclosure upon and sale of lands therefor are intended to obtain collection of the taxes, not for the State to obtain a profit upon re-sale. The law favors redemption. Black on Tax Titles (2d Ed.), par. 348.

In our opinion, all three of your questions may be answered in the affirmative, particularly where the land has been regularly assessed in the name of the owner (at time of sale) since the State acquired its title and such subsequently assessed taxes also are paid by the land owner.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Glenn R. Lewis

Glenn R. Lewis
Assistant

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APPROVED:

W. F. Moore

FIRST ASSISTANT ATTORNEY GENERAL

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