



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable C. A. Walters
County Attorney
San Saba County
San Saba, Texas

Dear Sir:

Opinion No. O-1057

Re: Taxing units not authorized to dispense with judicial sale and accept deed to property in satisfaction of ad valorem tax judgment.

We are in receipt of your letter of June 28, 1939, requesting the opinion of this Department upon the following question:

"In a case where state and county, district school and city, three separate tax units, hold a judgment for taxes and the owner of the land against which lien was foreclosed offers to deed the property to these three taxing units in satisfaction of judgment, can that be done and save the costs of sale and delay in acquiring the possession of the property?"

This Department ruled in opinion No. O-102 dated January 23, 1939, that a commissioners' court does not have the authority to compromise a disputed claim for delinquent ad valorem taxes. It was also ruled in opinion No. O-138 dated January 28, 1939, that an attorney who handles the collection of delinquent taxes does not have the power to settle or compromise tax suits for a sum less than the amount of the assessment plus penalties and court costs.

Unless otherwise specified by statute, taxes are payable only in money and this is always understood in the tax laws when nothing else is mentioned. 3 Cooley on Taxation, 4th Ed., p. 8453; Hummel v. City of Houston, 68 Tex. 10, 2 S. W. 740; Austin v. Fox, (Com. App. 1928)

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1 S. W. (2d) 601; Scisson v. State, (Tex. Cr. App. 1932)
51 S. W. (2d) 703.

The applicable statutes of this State which govern the collection of delinquent ad valorem taxes are not designed to obtain the property against which the tax is due but the lien and foreclosure is provided as an additional remedy and means for collecting the tax which is itself an obligation payable in money. The mere giving of a lien, reducing the tax obligation to judgment and foreclosure of a lien to secure its enforcement would not authorize the acceptance of another medium of payment unless so provided by statute.

Article 7326, Revised Civil Statutes, 1925, provides that suit shall be filed for the total amount of taxes, interest, penalty and costs and shall pray for judgment for the payment of the several amounts. It is provided in Article 7328 that the proceedings had therein shall be as provided by law in ordinary foreclosure suits. A personal judgment against the owner of the land for the years in which the taxes accrued is proper. Williamson v. City of Eastland, (T. C. A. 1933) 65 S. W. (2d) 774; Baldwin v. Hull - Daisetta Ind. Sch. Dist. (T. C. A. 1936) 95 S. W. (2d) 1350. In Brooks v. State, (T. C. A. 1931) 41 S. W. (2d) 715, it is stated:

"In Harrison v. Orr, 296 S. W. 871, construing this Article (7326), the Commission of Appeals intimated that the failure to render a personal judgment against the defendant would make the judgment interlocutory, and in Brooks v. State, 15 S. W. (2d) 665, speaking for this court, Mr. Chief Justice Hightower said that the failure to render a personal judgment against the defendant rendered the judgment fundamentally erroneous."

It is true that the Legislature has made provision for the protection of the interests of the State and other taxing units at the sale by enabling them to purchase the land in the event it is not sold to other parties. Article 7345b, Sec. 8, provides that :

"No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly, or to anyone

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having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment,****

Although a particular taxpayer may express an intention not to bid at a tax sale and be willing to deed the property to the taxing units in satisfaction of the judgment, upon the sale being conducted as provided by the statute, other parties may bid in the property at the sale and the full amount of the tax be collected. If the property is sold for less than the amount of the judgment and costs then the taxing units may resort to further execution to satisfy the deficiency where a personal judgment has been obtained.

Section 12 of Article 7345b provides for a two year period of redemption and Section 9 makes provision for an additional sale of the property when it is bid in by taxing units. No sale may be made by a taxing unit for less than the amount of the judgments without the written consent of all other taxing units and if the purchasing unit does not make the sale within six months after the period of redemption the property may be sold by the Sheriff at public sale.

Specific and detailed provision is made for the judgment for payment of delinquent taxes, foreclosure of the tax lien, judicial sale and redemption. We think the statutes provide the exclusive procedure to be followed in the foreclosure, sale and purchase of land in satisfaction of delinquent taxes.

It is our opinion that where three taxing units hold a judgment for taxes and a foreclosure of the tax

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lien, such units are not authorized to accept a deed to the property in satisfaction of the judgment but the procedure provided by statute for judicial sale should be followed.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Cecil C. Canback*
Cecil C. Canback
Assistant

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APPROVED AUG 22, 1939

George B. Murray
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