



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Jack Wisch  
County Attorney  
Cameron County  
Brownsville, Texas

Dear Sir:

Opinion No. 0-3624

Re: While property is being held by the taxing unit during the redemption period and for six months thereafter, should the said property be carried upon the current tax rolls of the various interested taxing units?

We are in receipt of your letter in which you request the opinion of this department upon the facts set out therein as follows:

"1. The delinquent tax liens against real estate were foreclosed upon under the provisions of said Article 7345b, all interested taxing units having joined therein, and when same was offered for sale under Section 8 of said Article, there being no bidders for the adjudged value or the aggregate amount of the judgments against the property in the suit, whichever is lower, a taxing unit which was a party to the judgment under the decree of Court bid same in for the use and benefit of itself and all other taxing units which were parties to the suit and which were adjudged in said suit to have tax liens against the property, and said property is held by such purchasing taxing unit for the redemption period and for six months thereafter. During said redemption period and for six months thereafter should the said property be carried upon the current tax rolls of the various interested taxing units?

"2. Going a step farther in the above set-out fact situation, to the expiration of the redemption period and six months thereafter, there being no purchaser for the property involved, the

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said taxing unit having theretofore purchased the same for the use and benefit of itself and all other taxing units which were parties to the suit and which were adjudged in said suit to have taxing liens against such property, continued indefinitely with title to said property. Does said property continue annually to be carried upon the current rolls of the various interested taxing units?"

Section 9 of Article 7345b reads in part as follows:

"If the property be sold to any taxing unit which is a party to the judgment under decree of court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suits to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same, and such property shall not be sold by the taxing unit purchasing same for less than the adjudged value thereof or the amount of the judgments against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment have been found to have tax liens against such property; and when such property is sold by the taxing unit purchasing same, the proceeds thereof shall be received by it for account of itself and all other said taxing units adjudged in said suit to have a tax lien against such property, and after paying all costs and expenses, shall be distributed among such taxing units pro rata and in proportion to the amount of their tax liens against such property as established in said judgment. Consent in behalf of the State of Texas under this Section of this Act may be given by the County Tax Collector of the county in which the property is located.

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"Provided that if sale has not been made by such purchasing taxing unit before six months after the redemption period provided in Section 12 hereof has expired, it shall thereafter be the duty of the Sheriff upon written request from any taxing unit who has obtained a judgment in said suit, to sell said property at public outcry to the highest bidder for cash at the principal entrance of the courthouse in the county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution. \* \* \*

The provision allowing redemption is Section 12 of Article 7345b, which reads in part as follows:

"In all suits heretofore or hereafter filed to collect delinquent taxes against property, judgment in said suit shall provide for issuance of writ of possession within twenty (20) days after the period of redemption shall have expired to the purchaser at foreclosure sale or his assigns; but whenever land is sold under judgment in such suit for taxes, the owner of such property, or anyone having an interest therein, or their heirs, assigns or legal representatives, may, within two (2) years from the date of such sale, have the right to redeem said property on the following basis, to-wit: \* \* \*."

In order to answer your question as to whether or not the property sold is to be carried upon the tax rolls during the period of redemption, it is necessary to see exactly what rights in the property were acquired by the purchasing taxing unit at the tax foreclosure sale.

It is a well recognized rule of law in this State that a purchaser at a tax foreclosure sale takes no title to the property until the redemption period has expired. The title of the owner is not extinguished by the foreclosure sale, but is extinguished only by the expiration of the redemption period. This rule was announced in the early case of Bente vs. Sullivan, 115 S. W. 350, by the Court of Civil Appeals of Texas, writ of error denied by the Supreme Court. The Court stated as follows:

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"It has been universally held that, where the statute confers upon the owner the right to redeem, his title is not extinguished until the time for redemption has expired. The opinion generally entertained upon this subject is very accurately expressed by Judge Gealey in his work on Taxation (2d Ed.) p. 542: 'The purchaser has no title to the land until the time for redemption has expired. He has consequently no constructive possession of the premises, and no more right to go upon and make use of them than any stranger to the title would have. His entry upon the premises would be a trespass upon the possession, actual or constructive, of the owner, who may recover against him for injury committed. Redemption gives no new title. It simply relieves the land from the sale which has been made, and this is true whether the redemption is made before the statutory time has expired or by consent of the purchaser afterwards.'"

To the same effect see the case of *McGraw vs. Potts*, 27 S. W. (2d) 550.

Under the above case, as well as numerous others, title remains in the owner of the property until the two year period of redemption is up despite the tax foreclosure sale. We believe, therefore, that unquestionably the property should be carried on the current tax rolls and assessed for taxes during the two year period. On the other hand, however, if the property is not redeemed within the two year period, the rights that the purchasing taxing unit acquired at the foreclosure sale blossom into full title.

In opinion No. 0-265 this department considered a fact situation where the State had bought certain lands sold under a foreclosure sale for delinquent taxes. The period of redemption had expired and the land was not redeemed. This department was asked to rule on the question of whether a purchaser at a second sale from the State would take the land free of taxes assessed since the purchase by the State at the original foreclosure sale. This department ruled as follows:

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"The State, not choosing to waive its deed, as was done in *League vs. State*, supra, but to stand upon the same, and the State's title there-to having become ripe through expiration of the period of redemption, the lands were not assessable for taxes for years subsequent to the purchase by the State. 61 *G. J.* 1232, Sec. 1674."

The rule is stated in 61 *Corpus Juris* 1232 in Section 1674 as follows:

"Where the state or municipality acquires a complete and absolute title by purchase at a tax sale, or by expiration of the time allowed for redemption from such sale, the land is not thereafter assessable for taxes of subsequent years; \* \* \*"

It is the opinion of this department that during the two year redemption period the property should be kept upon the current tax rolls and taxes assessed against such property, in the name of the person who was the true owner, not the taxing unit that purchased it at the tax sale, for it cannot be the true or actual owner until its title has ripened by the expiration of the redemption period, but the person who actually owned the property on January 1st of the year for which the taxes are assessed. In this connection, we direct your attention to the following authorities:

*Cranfill Bros. Oil Co. v. State*, 54 S. W. (2d) 815, error refused; *Gerlach Mercantile Co. v. State*, 10 S. W. (2d) 1035, error refused; *Texas Vegetable Union et al vs. Zavalla-Dimitt Counties Water Imp. Dist. No. 1*, 57 S. W. (2d) 883, error refused; Arts. 7326 and 7328.1, *Vernon's Ann. Civ. Statutes*; and 40 *Tex. Jur.* pp. 104, 255.

It is our further opinion, however, that if the property is not redeemed within the two year period then the lien against the property for taxes so assessed subsequent to the original foreclosure sale is extinguished and the property should not be continued to be assessed upon the current tax rolls of the various taxing units in the suit.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Billy Goldberg*  
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Assistant

APPROVED JUL 18, 1941

*Norm S. Peltier*  
FIRST ASSISTANT  
ATTORNEY GENERAL

EG:ej

APPROVED  
OPINION  
COMMITTEE  
BY *B. W. O. B.*  
CHAIRMAN