O-4836

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

September 16, 1942

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

Dear Sir:

Opinion No. O-4836
Re: Procedure for collection of delinquent ad valorem taxes where taxpayer has made assignment for benefit of creditors.

The facts presented by your letter of September 11, 1942 are as follows:

A furniture dealer who owes state and county ad valorem taxes has made an assignment of his merchandise for the benefit of his creditors. The property has been sold by the assignee to a third party who is now operating the furniture store. The taxes remain unpaid.

You request the opinion of this department advising you of the proper procedure to be taken by the tax collector in the collection of such taxes.

Article 7269, R.C.S., 1925, reads as follows:

"In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachments or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or property, or against any of his estate remain unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien

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> upon all such property; provided, that when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness. Such unpaid taxes shall be paid by the assignee, when said property has been seized by the sheriff, out of the proceeds of sale; in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found."

That Article makes it the duty of the assignee, under the fact situation here presented, to pay such taxes, and further provides that in the event that same are not paid "all such property may be levied on by the tax collector, and sold for such taxes in whomsoever's hands it may be found". Such Article fixes a lien on all the property of the assignor for the benefit of creditors, to secure the payment of unpaid taxes. Zachary vs. City of Uvalde, 42 S. W. (2d) 417.

In the case of State v. Jordon, 60 S.W. 1008, the Court, in discussing this statute, made this statement:

> "The effect of the article was to give the State a lien upon all the property of an estate or individual (under the circumstances named in the article), so that all the property should be under a preference lien for all the taxes due by the individual or estate, without reference to the particular property against which it was assessed."

The first expression of our courts on the effect of this article was that of the Court of Civil Appeals in the case of People's National Bank v. City of Ennis, 50 S.W. 632, from which we quote:

> "Article 5175a (now Art. 7269) creates a lien upon the personal property of the taxpayer when the conditions named therein exist." (Parenthesis ours).

Every element necessary to make the provisions of Article 7269 operative is present in the fact situation under consideration. Under the authorities above cited we think the assignee is obligated to pay the unpaid state and county taxes on the property assigned. We are further of the opinion that a lien exists on said property to secure the payment of such taxes, and that said property may be levied upon and sold for such taxes by the tax collector, if it can be identified in the hands of the assignee's purchaser, should the assignee fail to pay said taxes.

An appropriate procedure for the tax collector would be first to make demand of the assignee for payment of the taxes, and in the event of his failure to pay same, to proceed to make such taxes from said property, either by seizure and sale or by suit for recovery of the taxes and foreclosure of the tax lien.

Trusting that we have fully answered your inquiry, we are

APPROVED SEP 18, 1942

Very truly yours

ATTORNEY GENERAL OF TEXAS

FIRST ASSISTANT
ATTORNEY GENERAL

By Fowler Roberts
Fowler Roberts
Assistant

FR:nw

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN