



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Edgar Hutchins
County Attorney
Hunt County
Greenville, Texas

Dear Sir:

Opinion No. 0-6467
Re: Procedure to clear title to
land sold to the State for de-
linquent taxes which were actu-
ally not due thereon.

The basis for your request for an opinion from this department upon the captioned question is set forth in your letter as follows:

* . . .

"In 1930 the County foreclosed on a tract of land in the regular way and after securing judgment advertised the land for sale. As no bidders appeared on the sale date the Sheriff executed his deed to the State of Texas. There has been no subsequent sale of said land nor was it redeemed. It developed this year that the taxes which were the basis for the foreclosure in 1930 constituted a double rendition of the property involved and the regular rendition was paid on current receipts for each of the years. The rendition which formed the basis for this tax foreclosure has since been cancelled as an erroneous rendition.

"It is my opinion in view of the above state of facts that the entire foreclosure proceeding became void, and that the Sheriff's deed to the State of Texas is a void deed. This deed however

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does constitute a cloud upon the owner's title to the land which the County and State is obligated to remove. Under the present statutes providing for a re-advertisement of property bid in the name of the State it is contemplated that the foreclosure was valid and that a tax lien actually existed. In this case where no tax lien actually existed we want to know what procedure is necessary in order to clear this title. . . ."

Article 7291 of Vernon's Annotated Civil Statutes of Texas, 1925, as amended, provides as follows:

"The owner of real estate which has been bought in by the State for taxes, or his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon with costs of advertisement; and if it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall upon the payment of the amount that may be due thereon, cancel such sale; and deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been cancelled; which certificate shall release the interest of the State and the same may be recorded in the proper county as other conveyances of real estate are recorded."

Article 7292, Vernon's Annotated Civil Statutes of Texas, 1925, as amended, provides:

"Each commissioners court shall, at the regular terms of said courts sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the State for taxes may appear before said court in person or by proxy and show

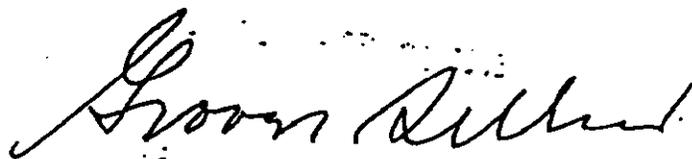
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to the satisfaction of a majority of said court that the taxes for which his lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said court shall issue to said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon presentation of said certificate to the Comptroller, he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the State may have acquired in and to said land by reason of such tax sale."

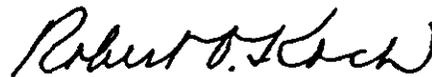
You are advised that you may proceed under either of the above quoted statutes in order to remove any encumbrance created by the tax sale in question. As a practical matter, we understand the Comptroller's Department operates under Article 7291, but in order to satisfy itself thereunder, requires the Commissioners' Court to issue a certificate as provided in Article 7292.

Very truly yours

ATTORNEY GENERAL OF TEXAS



By



Robert O. Koch
Assistant

ROK:mp

