



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Bruce L. Parker
County Attorney
Gray County
Pampa, Texas

Dear Sir:

Opinion No. 0-5848

Re: Whether penalties and interest on delinquent taxes are a valid lien against the property or estate of a deceased land owner.

You have requested the opinion of this department on the following factual situation:

"The tax collector of this county has on his delinquent tax roll taxes for a number of years on property owned by one C.M. Humphrys. Mr. Humphrys died a few months ago and his estate is denying any liability for penalties and interest due on such delinquent ad valorem tax on the theory that penalties and interest are penal in nature and that they do not continue as a lien against the land after the death of the land owner.

"

"May I have your opinion as to whether such penalties and interest are a valid lien against the property or against the estate of the deceased land owner."

Article 8, Section 15, of the Constitution of Texas, is as follows:

"The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the

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taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide." (Emphasis ours)

Under the decision of the Supreme Court of Texas in Jones v. Williams, 45 S.W. (2d) 130, 136, it was held that:

"Section 15 of Article 8 of the Constitution provides a descriptive legal term for exactions which maybe imposed by the Legislature for failure to pay property taxes, namely, 'penalties,' a common-law term implying punishment."

The question there involved was whether or not interest and penalties constituted a part of the tax which the Legislature could not remit by general law, in violation of Section 56, Article 3, Constitution of Texas. The court held that interest was a penalty and that neither formed a part of the tax so as to prevent their remission by general law.

In the case of City of San Antonio v. Toepperwien, 104 Tex. 43, 133 S.W. 416, the question was involved as to whether the provisions of Section 15 of Article 8 of the Constitution, supra, created such a lien as would attach to a homestead despite the provisions of Section 50, Article 16, of the Constitution. There was also involved the question as to whether or not the purchaser of a homestead belonging to a decedent upon which delinquent taxes, interest and penalties had accrued and who purchased such homestead subject to the lien for all taxes which had accrued thereon, was personally liable for the payment of such taxes and penalties.

The court held as follows:

"Section 15 of article 8 of the Constitution of this state reads as follows: 'The annual assessment made upon landed property shall be a special lien thereon, and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations

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as the Legislature may provide.' The plain and unmistakable meaning of the language quoted subjects all landed property in this state to sale for assessment of taxes lawfully made thereon and for all penalties provided by law which may accrue on account of delinquencies in the payment of such taxes. 'All landed property' is a comprehensive phrase, and the Constitution makes no distinction as to the use which may be made of it. The language comprehends all lands whether it be a homestead or not. We presume that it would not be contended that section 15, art. 8, would not be sufficient to make the homestead liable for the penalties if the Constitution did not contain section 50, art. 16. . . ."

After disposing of the question of the validity of the constitutional lien for both the taxes and penalties, the court holds as follows as to the personal liability of the purchaser:

" . . . The purchaser of property incumbered with notice always buys it subject to a previous valid lien, but he does not, although he may express the effect of his purchase in terms by saying that he purchased it subject to the lien, become personally liable for the debt. Garza v. Hammond, 39 S.W. 610."

In the case of Richey, et al., v. Moor, 249 S.W. 172, 173, (Sup.) Chief Justice Cureton, after quoting Section 15, Article 8, of the present Constitution, supra, and similar provisions of the Constitution of 1869, states as follows:

"The difference between these two provisions is apparent, but, in so far as a lien is given on land for taxes, the language used is substantially identical, and in meaning precisely the same. Prior to the incorporation of the language used in section 20, just quoted, with reference to a lien on land for taxes, in the Constitution of 1876, its meaning had been definitely declared by this court. As used in the Constitution of 1869 it was held to mean that the lien provided for attached, not to the property of the taxpayer

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generally, but only to each separate tract or parcel of land for the taxes assessed against it. ... (Citing cases) By incorporating this language in the Constitution of 1876 without material change or modification, the people in adopting the Constitution necessarily adopted the construction previously given it by the highest court of the state, and the language of the present Constitution has the same meaning which it had in that of 1869 as declared by the Supreme Court. ... (Citing cases)"

Therefore, it is the opinion of this department that the penalties and interest constitute a lien against the land, although the delinquent Humphry is deceased. However, such lien attaches only against the particular tract of land upon which the taxes were delinquent, and does not attach to other lands or property of the estate. In other words, a lien attaches against each tract of land only for the taxes, interest and penalties against it.

Hence, there is no valid lien against the remainder of the estate of the decedent, if any, unless the estate is or becomes insolvent, in which event Article 7269, Revised Civil Statutes, would be applicable. The entire estate of the decedent is liable for any deficiency judgment which might exist after the foreclosure and sale of the landed property for the delinquent taxes and penalties.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

C. K. Richards
C. K. Richards
Assistant

CKR:db

APPROVED OCT 6 1915
Arthur H. Foley
FIRST ASSISTANT
ATTORNEY GENERAL

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