



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

May 13, 1948

Hon. James C. Martin
County Attorney
Nueces County
Corpus Christi, Texas

Opinion No. V-576

Re: The accrual of taxes on property bought in by a taxing unit at a tax foreclosure sale, as well as the authority of a taxing unit to sell such property at a private sale for more than the tax judgment.

Dear Sir:

You have requested our opinion on the legal effect of the amendment of Section 9, Article 7345b, Vernon's Civil Statutes, by the provisions of House Bill 695, Chapter 454, Acts 50th Legislature, Regular Session, 1947, page 1061, by propounding the following questions:

"1. Does a taxing unit, the State of Texas included, have the right and power to make a valid private sale of property bought in for taxes where such sale is for more than the tax judgment?"

"2. When property is bought in by a taxing unit at a tax foreclosure sale and is deeded to such taxing unit to hold for other taxing units interested in the judgment, do taxes continue to accrue on such property or are the taxes abated until it is sold to a private individual by such taxing unit?"

In the comprehensive brief submitted by you, you have discussed the interpretation of Section 9 by the Supreme Court of Texas in the case of *Little v. Dennis*, 187 S.W. 2d 76, and opinions of the Attorney General, 0-950, 0-1939, 0-5056-A, and V-124, prior to the amendment of such section.

Prior to the 1947 amendment the provisions of Section 9, Article 7345b, V.C.S., which authorized private sale of property bought in for taxes by a taxing unit under the statutory provisions read as follows:

“. . . 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.”

The material changes made by the Fiftieth Legislature in amending Section 9 are as follows:

“. . . The taxing unit may sell and convey said property so purchased by it, or which has heretofore been purchased in the name of any officer thereof, at any time in any manner determined to be most advantageous to said taxing unit or units, either at public or private sale, subject to any then existing right of redemption; and the purchaser of the property at any such sale shall receive all of the right, title and interest in said property as was acquired and is then held by said taxing unit under such tax foreclosure sale to it; but such property shall not be sold by the taxing unit purchasing the same, at private sale, for less than the adjudged value thereof, if any, as established in the tax judgment, or the total amount for which such judgment was rendered against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment shall have been found to have tax liens against said property. All such consents shall be evidenced by the joinder in the conveyance by the consenting taxing units, acting by the officers herein authorized to give such consents. Consent to such sales in behalf of the State of Texas may be given by the County Tax Collector of the county in which the property is located; and consents on behalf of other taxing units may be given by the presiding officers of their governing bodies. . . .”

Section 9 as amended also provides for the manner of executing the conveyance of title of the property sold at both public and private sale and further provides for confirmation and validation of sales and conveyances made by taxing units or officers thereof of property purchased by such taxing units or in the name of any of their officers at foreclosure sales which had been made prior to the passage of the amendment. It will be noted that the case of *Little v. Dennis*, supra, dealt solely with the law as it existed prior to the amendment, and the same is true of the opinions of the Attorney General.

It is evident that the legislative intent in enacting H. B. 695 was to accomplish a dual purpose; first, to clarify the law by specifically authorizing the resale by public or private sale of property sold under foreclosure for delinquent taxes and acquired by the taxing units under the provisions of Article 7345b; and, second, to confirm and validate such sales as had been made prior thereto but which through lack of express statutory authority or erroneous construction of the law had rendered such sales and the conveyances made thereunder partially invalid, even though the sales and conveyances were made by the taxing units in the utmost good faith.

The above-quoted language of Section 9, Article 7345b, as amended by H. B. 695 is clear and unambiguous and not only authorizes taxing units, including the State of Texas, to make a valid private sale of property bought in for taxes, subject to any then existing right of redemption, for an amount equal to or in excess of the adjudged value thereof, if any, as established in the tax judgment or for the total amount or an amount in excess of the total amount for which such judgment was rendered against such property in said suit, whichever is the lower, without the necessity of a written consent of all taxing units found to have tax liens against said property under the judgment.

Your second question is restated:

"When property is bought in by a taxing unit at a tax foreclosure sale and is deeded to such taxing unit to hold for other taxing units interested in the judgment, do taxes continue to accrue on such property or are the taxes abated until it is sold to a private individual by such taxing unit?"

The Supreme Court of Texas in the case of *State v. Moak et al*, 207 S.W. 2d 894, 897, has enunciated the rule governing the answer to the foregoing question. The opinion holds as follows:

"... The only interest in the land now extant is that acquired by the taxing units and conveyed by them to Reeve. There is no statute warranting the fixing of a lien against the land for taxes during the time it was held by these taxing units, and the contention advanced by the State that taxes accrued against the property while thus, in effect, held by this sovereign has been emphatically rejected by the courts. (Citing cases)

"As to taxes after the redemption period and before the sale to Reeve. The property was exempt from taxation while held by the City for the State, the County and itself, as was pointed out in the foregoing discussion. Consequently, no taxes accrued during this period."

Under the decision of the Supreme Court of Texas, when property is bought in by a taxing unit at a tax foreclosure sale and is held by such taxing unit for the benefit of the other taxing units interested in the judgment, no taxes accrue upon the property until the sale by the taxing unit to a third party in the manner provided by Section 9, Article 7345b, V.C.S.

SUMMARY

Under the provisions of Section 9, Article 7345b, V.C.S., as amended by Ch. 454, Acts 50th Leg., 1947, a taxing unit, including the State of Texas, has the authority to sell property acquired by it under the provisions of Art. 7345b, V.C.S., at a private sale, for more than the amount of the judgment. Property purchased by a taxing unit at a foreclosure sale under the provisions of Art. 7345b, V.C.S., is exempt from all taxes and tax liens until the sale thereof to a private individual. Sec. 9, Art. 7345b, V.C.S., as amended by Ch. 454, Acts 50th Leg., 1947; State v. Moak et al, 207 S.W. 2d 894, 897.

Yours very truly

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APPROVED

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