



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

January 13, 1960

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-780

Re: Whether the Comptroller
is authorized to issue
warrants in payment of
claims filed under H.B.
22, Sec. 1A, 56th Leg.
3rd C.S., relating to
delinquent taxes and
sales under the Veterans'
Land Program

Dear Mr. Calvert:

By recent letter you advise:

"I have two claims filed with this department in accordance with the terms and provisions of Section 1A of House Bill 22, Third Special Session of the Fifty-sixth Legislature of the State of Texas, each claim certified to and signed by the Chairman of the Veterans' Land Board requesting: (a) that warrants be issued to the two taxing agencies named; (b) that warrants be issued in the name of the veteran who made payment on the delinquent taxes and whose name appears in the next to the last paragraph of the certificate attached. (The certificate is enclosed.)

"I am attaching hereto a copy of these two claims for your examination and, after you have examined the same, I will thank you to advise this department whether or not I am authorized to issue warrant in payment of same. If these are in fact and in law valid claims against the State of Texas the appropriation is sufficient for warrants to issue in payment of the two claims."

In 1955, the Veterans' Land Board asked the Attorney General for an opinion on several questions relating to forfeiture of contracts for purchase of land under the Veterans' Land Act.

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In answer to these questions, Attorney General John Ben Sheppard in Opinion No. S-183, rendered on December 12, 1955, held in the pertinent part:

"10. In the event that delinquent taxes have accrued against a tract of land being purchased through the Veterans' Land Program and the Veteran's contract is forfeited and the land is resold by the Board, as provided in the Veterans' Land Act, the purchaser of the land at the second sale takes the land free from all past delinquent taxes. In such case there is no lien upon the land by reason of the prior delinquent taxes, and a personal judgment for such taxes could be secured only against the original veteran."

Relying upon enumerated holding No. 10, the Veterans' Land Board, acting through its agents and representatives, advertised that land forfeited under the Act and held for re-sale "will be sold free and clear of any tax encumbrances."

In 1958, the San Antonio Court of Civil Appeals, in the case of State v. Bexar-Medina-Atascosa Counties W.I. Dist., 310 S.W. 2d 641, held that the liens for water district taxes, flat rate assessments, and bond retirement assessments charged against land in the hands of an original veteran purchaser were not extinguished upon forfeiture of the purchase contract, but were enforceable against the land in the hands of a subsequent purchaser from the Veterans' Land Board. The Supreme Court of Texas refused an application for writ of error in the case on May 21, 1958.

Prior to the decision in the Bexar-Medina case, the Veterans' Land Board made a number of re-sales of forfeited land to purchasers who relied on the representation concerning taxes. Since the decision, some purchasers have paid outstanding taxes to prevent foreclosure; in other cases, taxes accruing against property while in the hands of the original purchaser remain unpaid, and constitute a lien against the land. In order to rectify the inequities inherent in the situation, the 56th Texas Legislature passed House Bill 22, which provides:

"For the payment of the claims listed below, there is hereby directed to be paid out of the sum appropriated and set aside by the General Appropriation Bill for the Biennium September 1, 1959--August 31, 1961, for the payment of itemized claims and judgments, an amount not to exceed the amounts set forth opposite the names of the following Military Veterans respectively, to wit:

[Here follows list of claims]

"Said payments shall be received in full satisfaction of all claims and demands of said named veterans, respectively, against the State of Texas arising out of the resale by the Veterans Land Board, under the provisions of Article 5421m, Revised Civil Statutes, as amended, of various tracts of land and the purchase thereof, respectively, by said named veterans upon representation based on a legal construction of the applicable law, which construction was overruled by the Supreme Court of Texas, that such tracts were sold free of any lien for ad valorem taxes, bond taxes, flat rate assessments, water charges, and special assessments levied by any municipality or political subdivision of the State. Said payments shall be made as and when the Chairman of the Veterans Land Board certifies to the Comptroller: (a) the name of the veteran; (b) a brief description of the property purchased; (c) the date of the initial contract of sale was forfeited by the Board; (d) the amount of the taxes and other charges specified above, together with penalty and interest thereon and that such amounts accrued against the land during or after the tax year in which such lands initially were sold by the Board but not subsequent to the tax year in which such initial contracts were forfeited, all pursuant to the provisions of Article 5241m, Revised Civil Statutes, as amended; and, (e) whether in fact said amounts have been paid by the veteran or are still owing and unpaid to the agency or official charged by law with the collection thereof. If said amounts have been paid by the veteran the Comptroller shall issue the

State's warrant in the name of the veteran making such payments and deliver said warrant to the Veterans Land Board for transmittal to the veteran; if, however, said amounts are still due and owing to the agency or official charged with the collection thereof, the State's warrant shall be issued in the name of such agency or official and delivered to the Veterans Land Board for transmittal to such agency or official. The Comptroller shall issue the warrants provided for by this section in the amounts certified by the Chairman of the Veterans Land Board without the necessity of submission to or approval by any other Official of this State, the requirements of any other section of this Act to the contrary notwithstanding. The Veterans Land Board shall, in transmitting said warrants as above provided, keep an accurate record of each transmittal."

You have submitted with your opinion two types of claims under H.B. 22, which calls for determination of a two-fold question:

(1) Does a taxing authority have a valid claim against the State for taxes against land forfeited and resold under the Veterans' Land Act which accrued while the land was in the hands of the original purchaser.

(2) Does a subsequent purchaser from the Veterans' Land Board have a valid claim for reimbursement for payment of taxes which accrued while the property was in the hands of the original purchaser?

Merger of Tax Liens

In order to clearly delineate the problem presented, it is necessary to briefly revisit the question of merger. The Bexar-Medina case, for the first time in Texas, appears to forge a dominant line of authority.¹ Under this case, and prior

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The prior decisions of Texas Courts on the question of merger of tax liens of one taxing authority upon acquisition of title by another taxing authority are anything but consistent.

consistent decisions, the following propositions may be deemed established:

1. Tax liens of cities, schools, counties, the state, and other taxing authorities are of equal dignity. State v. Bexar-Medina-Atascosa, etc., supra; Lubbock Independent School District v. Owens, 217 S. W. 2d 186 (Tex. Civ. App. 1949, error refused). (Note: In view of the Bexar - Medina case, it appears that in this regard there is no distinction between tax liens and liens for special assessments.)

2. When one taxing authority acquires title to property against which it has a tax lien, the tax lien merges with the superior title; tax liens of other authorities not sharing in the legal title are unaffected. Ibid.

3. Tax liens which are not merged are outstanding, but enforcement of them is suspended during the time the property is owned by the taxing authority and devoted to a public purpose.² Ibid.

1. (Con't.)

See: (Childress County v. State, et al., 92 S.W. 2d 1011 (Tex. Sup. Ct. 1936); and compare the broad language used to fortify the decisions in Childress County v. Schultz, 199 S.W. 2d 860 (Tex. Civ. App. 1946), and City of Marlin v. State, 205 S.W. 2d 809 (Tex. Civ. App. 1947), with the result in Gerlach Mercantile Co. v. State, 10 S.W. 2d 1035 (Tex. Civ. App. 1928). Note also that in State v. Stovall, 76 S.W. 2d 206 (Tex. Civ. App. 1934, error refused) the court held that state land sold to a private purchaser, and subsequently retaken by the state upon forfeiture of the contract of sale, was not subject to seizure and sale for taxes accruing in favor of a school district while the land was in the hands of the private purchaser. Though this much of the decision is consistent with what is now the weight of authority, the court perpetually enjoined the enforcement of the school district's lien, thereby indicating that the Court considered such lien extinguished.²

As a corollary to this proposition, it should be noted that under the authority of Art. XI, Sec. 9, Tex. Const., the property is not subject to taxation during the time it is owned by the State or a political subdivision thereof and held for public purposes. See: City of Abilene v. State, 113 S.W. 2d 631 (Tex. Civ. App. 1937, error dism.).

4. Liens such as are described in No. 3 above may be enforced against the property when resold to a private individual.

In light of the foregoing propositions, it is evident that the State's liens for ad valorem taxes against the properties in question merged with its superior legal title upon reacquisition of the properties by the Veterans' Land Board. The liens in favor of the counties,³ school districts, water improvement districts, etc., for taxes or assessments, were not extinguished, but merely suspended during the time that the property was held for re-sale. Consequently, the question of liability here posed concerns only liens for taxes or assessments in favor of the latter authorities.

These appropriations are valid unless same are in violation of section 44 of Article 3 of our State Constitution. The constitutional provision involved reads as follows:

"The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, now provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law."

So far as applicable to this opinion, the above constitutional provision may be read as follows: "The Legislature--- shall not grant---by appropriation or otherwise, any amount

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In this connection, it makes no difference that the county is the collecting agent of the State for state ad valorem taxes. The counties obtained no interest in the State's superior legal title upon reacquisition by the Veterans' Land Board; consequently, the counties' tax liens, being of equal dignity with the State's liens, are not extinguished. (For an example of different treatment of State and county tax liens, see Childress County v. State, cited in the body of the opinion.)

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of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law." Certain taxing agencies of the State are "any individual" within its meaning. See Austin Nat'l Bank v. Sheppard, 71 S.W. 2d 242 (Com. App. opinion adopted by Supreme Court 1934) This case also holds that the common law as well as statutory law constitutes "pre-existing law" within the purview of said constitutional provision, and cites State v. Elliott (Tex. Civ. App.) 212 S.W. 695 (writ ref.)

Section 19 (A) of Article 5421m provides:

"The resale of land which has been forfeited under the provisions of this Act may be made to the highest bidder; provided, however, that sales shall be made to qualified veterans only and under the same terms and conditions as provided elsewhere in this Act for original sales. Such sales shall be held at such times and in such manner as the Board may prescribe, and the Board shall have the right to reject any and all bids. If the successful bidder refuses to execute a contract of sale and purchase, all moneys submitted with his bid shall be forfeited and deposited in the State Treasury and credited to the Veterans' Land Board Special Fund."

The Board in advertising such lands for re-sale stated that the lands were free and clear of all liens for taxes and assessments. Of course the Board was relying on opinion No. S-183 (supra) by Attorney General John Ben Sheppard, and was laboring under a mistake of law. However, the veteran purchasers in relying on such representations, calculated and submitted their bids under a mistake of fact. Under the common law, equity requires that relief be granted when one party is injured by a contract entered into through a mutual mistake as to a material fact. The Board's mistake of law gave rise to a mistake of a material fact by it, i.e., the amount of money to be expended by the purchaser to obtain clear legal title, and thus the actual sales price was materially different from what the Board believed it to be under their mistaken conclusion of law. The Texas courts have always recognized this principle of law.

"That a contract may be entirely rescinded upon the ground of mutual mistake, as well as for fraud, is well settled. In such cases, where the parties suppose they are bargaining with reference to specific property which they have in mind, when in fact it either does not exist or is materially different from what they believed it to be, it is very evident that their minds have not met and concurred so as to constitute a contract as to the real subject matter, as it is afterwards ascertained to be and that the conveyance of the property as it really exists (though it may be identified as therein described) does not evidence the true intention of the parties in making the contract." Pendarvis v. Gray, 41 Tex. 326 (1874).

Here the State, acting through the Veterans' Land Board re-sold the lands, which it believed to be free and clear of taxes and assessment liens, to the veterans who were the highest bidders. These veterans calculated and submitted their bids on the basis of the lands being unencumbered by tax and assessment liens. There was not a meeting of the minds and not a valid and subsisting contract, unless the appropriations made by the Legislature to pay these outstanding taxes and assessments are valid. The veterans would have the right to rescind the contracts, recover the amount of money paid as well as monies invested in good faith in improving the lands. It seems however, that all the veteran purchasers want is to be made whole and have the State to convey to them what it purported to convey and what the veterans in good faith believed they were purchasing.

The State has the right to exact strict obedience to its laws and constitution, but it should also be the policy of the State, and we believe it is, to deal fairly with veterans who, in good faith, accept its offer to purchase lands belonging to the Veterans' Land Fund.

It is our opinion that the Legislature has the authority to appropriate money to cure the title to any of its public lands. This may be accomplished by authorizing the expenditure of appropriated money by the Attorney General in bringing and prosecuting trespass to try title suits, or locating adverse claimants and securing quit claim deeds, or securing necessary affidavits of heirship, etc. and placing same of record.

Likewise, the Legislature has the authority to appropriate money to pay off and discharge valid liens or other encumbrances against its public lands, so as to have a good and marketable title thereto. The appropriations in question should have been made by the Legislature to discharge these liens prior to their resale to the veterans or they should have been discharged at the time of closing the re-sale transaction, or have been taken into consideration at the time of advertising, calculating and submitting the bids. In which case they could have been assumed by the Veterans and the contracts of resale would have resulted in a meeting of the minds and a valid and subsisting contract would have resulted.

It is, therefore, our opinion that the Comptroller is authorized to issue the warrants in question in accordance with the provisions of H.B. 22, Sec. 1A, 56th Leg. 3rd C.S. in that the appropriations in question are supported by the common law, which constitutes pre-existing law. Austin Nat'l Bank v. Sheppard. (supra)

S U M M A R Y

The Comptroller has the authority to issue the warrants in question in accordance with the provisions of H.B. 22, Sec. 1A, 56th Leg., 3rd C.S.

Yours very truly,

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