



OFFICE OF THE
CRIMINAL DISTRICT ATTORNEY
WOOD COUNTY, TEXAS

ID# 13700
mjs

MARCUS D. TAYLOR
CRIMINAL DISTRICT ATTORNEY

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P.O. BOX 689
QUITMAN, TEXAS 75783
(214) 763-4515

Office of Attorney General
Opinions Committee
ATTN: Mr. Rick Gilpin
P. O. Box 12548
Capitol Station
Austin, TX 78711

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Opinion Committee

- Re: (1) Is property seized by the State pursuant to Chapter 59 of the Code of Criminal Procedure exempt from property taxes?
(2) If seized property is exempt, at what time does the exemption begin and how long does it continue?

Dear Mr. Gilpin:

I respectfully request an Attorney General's Opinion on questions pursuant to Art. XI, Sec. 9 of the State Constitution, Sec. 11.11 of the Property Tax Code and Chapter 59, Code of Criminal Procedure.

Article XI, Sec. 9 of the Constitution of the State of Texas in part reads:

"The property of counties, cities and towns owned and held only for public purposes, . . . and all other property devoted exclusively to the use and benefit of the public shall be exempt from . . . taxation."

Section 11.11(a) of the Property Tax Code in part states:

"Except as provided . . . property owned by this state or political subdivision of this state shall be exempt from taxation if the property is used for public purposes."

Article 59.02 of the Code of Criminal Procedure in part reads:

(a) "Property that is contraband is subject to seizure and foreclosure under this chapter."

Article 59.01(6) of the Code of Criminal Procedure in part reads:

" 'Seizure' means the restraint of property by a peace officer under Art. 59.03(a) or (b) of this Code."

On October 23, 1989, Wood County Sheriff's Officers, executing a valid search warrant seized 723.796 acres of land in Wood County, Texas, after the discovery of an illegal amphetamine laboratory and six pounds of amphetamine product and numerous containers of precursor chemicals. The record title to the land was in a person by the name of Robert Thomas, who could not be located. Subsequent investigation revealed that the name Robert Thomas was an alias and the true name of the individual is still unknown. A mortgage was on record in favor of Joe G. McGuffey covering 564.796 acres of the aforementioned tract of land.

When the District Attorney, pursuant to Chapter 59 of the Code of Criminal Procedure, notified Mr. McGuffey and the taxing authorities of the seizure, the taxing authorities promptly filed suit for taxes due for 1989. McGuffey then, based upon authority granted him under the Deed of Trust, posted the property for foreclosure and attempted to foreclose on the entire 723.796 acres. The State was forced to seek Orders Preserving Property pursuant to Chapter 59 of the Code of Criminal Procedure to restrain the foreclosure sale. Ultimately a settlement was reached with McGuffey wherein he released 159 acres of land free and clear to the State and the State, in exchange, allowed McGuffey to proceed to foreclose on the 564.796 acres.

Because of the necessity of serving the elusive "Robert Thomas" by publication and several other difficulties which arose, the Final Judgment of Forfeiture could not be obtained until October 26, 1990. The Sheriff's office, pursuant to Chapter 59 of the Code of Criminal Procedure, posted a Notice of Sale of the property for public auction on May 7, 1991, at 10:00 A.M. As several proposed bidders gathered and the Sheriff was about to commence the sale, the Tax Assessor for the Mineola Independent School District stepped forward and announced (although untrue) that there were over \$8,000 in delinquent taxes due on the 159 acres of land about to be auctioned. Understandably, several of the proposed bidders departed. The high bid was \$20,800 for 160 acres of land. That bidder presented a letter of credit from a bank and also promptly announced that the bank would not honor that letter of credit because of the delinquent taxes. Therefore, the Sheriff chose to void the sale.

The State, acting by and through her Criminal District Attorney for Wood County, and the Sheriff of Wood County desire to sell the property and convert it to cash for law enforcement purposes pursuant to Chapter 59. However, the District Attorney and the Sheriff also feel that it is their responsibility to maximize, within reason, the proceeds since such funds would be beneficial to the taxpayers of Wood County and the State of Texas. Before attempting another sale, however, it is painfully obvious that the questions submitted must be answered. Obviously, bidders are going to be apprehensive about paying fair market value for property if there are delinquent taxes and if the amount of those taxes is unknown. An examination of the case and statutory law in the State of Texas reveals no case whatsoever on the subject points, since Chapter 59 of the Code of Criminal Procedure is relatively new.

Since no law can be found which directly addresses tax exempt status of seized contraband, we believe the law as stated in the 1945 Supreme Court of Texas case, City of Austin v. Shepherd, 190 S.W. 2d 486, should apply. This particular case was also applied in Attorney General's Opinion No. 0-7348.

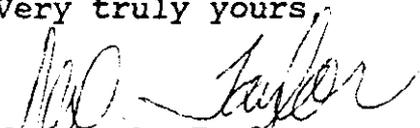
In the City of Austin v. Shepherd, the municipality acquired land by a judgment for unpaid municipal taxes. Our land was seized because of illegal criminal activity. However, in both the City of Austin case and our situation, the property is being held by the government until purchasers can be found who are willing to pay fair market value for the property. The Supreme Court of the State of Texas held in City of Austin v. Shepherd that the land acquired by the City on delinquent city taxes and held only for the purposes of resale is "public property held for public purposes" within the Constitution exempting such property from taxation. An examination of the case history of City of Austin v. Shepherd shows that this case remains the law of the land and is apparently well settled.

Furthermore, Attorney General Grover Sellers in Attorney General's Opinion No. 0-7348 determined that when the City of San Antonio and the San Antonio Independent School District bought lands at a tax sale, such governmental entities were not subject to taxation on such property for state and county purposes from the time of acquisition and for such reasonable period of time thereafter as the property may be held looking to its resale. Further, the last paragraph of this Attorney General's Opinion indicates that the date the exemption begins is the date when the former owners were ousted and possession of the land is taken by the city and school district. I would point out that under Chapter 59 of the Code of Criminal Procedure and the facts of our specific case, the real estate in question was seized and possession taken by the State on October 23, 1989, and the former "owners" immediately ousted and that seizure and forfeiture were never contested.

I would, therefore, respectfully request that you answer the two questions which are the subject of this inquiry. As far as my office can discern, property seized by the State pursuant to Chapter 59 of the Code of Criminal Procedure should be exempt from property taxes until it is sold to a non-exempt purchaser. However, until I am in receipt of some higher authority, we cannot safely proceed with a sale of this property.

Your kind and prompt attention to this matter would be greatly appreciated. Thank you very much.

Very truly yours,


Marcus D. Taylor
Criminal District Attorney

MDT/dm