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OPINION COMMITTEE

JO ANNE BERNAL
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EL PASO COUNTY TEXAS
COUNTY COURTHOUSE
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FILE # ML-46782-11
I.D. # 46782

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RQ-0983-GA

July 12, 2011

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7009 2250 0003 9360 6053

Re: REQUEST FOR AN OPINION REGARDING BOND FORFEITURE
JUDGMENTS
(CA File #OP-11-284)

Dear General Abbott:

I am seeking your opinion regarding the authority of the El Paso County Attorney to enforce a Final Bond Forfeiture Judgment that is over twelve (12) years old.

In 2007, the Texas Legislature amended §52.006 of the Texas Property Code to extend the duration of a judgment lien in favor of the State from ten (10) to twenty (20) years.

Notwithstanding Section 34.001, Civil Practice and Remedies Code, a judgment in favor of the state or a state agency, as that term is defined by Section 403.055, Government Code, does not become dormant. A properly filed abstract of the judgment continues to constitute a lien under Section 52.001 until the earlier of the 20th anniversary of the date the abstract is recorded and indexed or the date the judgment is satisfied or the lien is released. The judgment lien may be renewed for one additional 20-year period by filing, before the expiration of the initial 20-year period, a renewed abstract of judgment in the same manner as the original abstract of judgment is filed. The renewed judgment lien relates back to the date the original abstract of judgment was filed. Tex. Prop. Code § 52.006 (2010).

At the time the Legislature amended Section 52.006 of the Texas Property Code, the County of El Paso had outstanding judgments beyond the ten year time limit but less than the amended 20 year time limit. The County had not registered liens on said judgments as the Surety against whom the judgments were rendered ceased to operate as a business and was at the time perceived to be judgment proof. The Surety has since started anew in a different County and is believed to have assets against which liens could potentially attach.

As stated above, a judgment in favor of the state does not become dormant. Additionally, Texas Civil Practice and Remedies Code § 16.061 bars the statute of limitations for the state or a political subdivision of the state regarding the revival of dormant judgments.

“A right of action of this state or a political subdivision of the state, including a county, an incorporated city or town, a navigation district, a municipal utility district, a port authority, an ... is not barred by any of the following sections: 16.001--16.004, ... ,16.035-16.037, ... , or 71.021.”
Tex. Civ. Prac. & Rem. Code § 16.061(a).

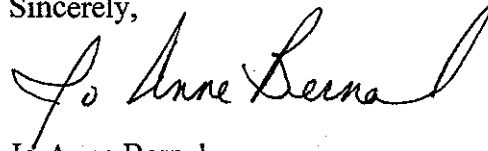
Section 16.035 of the Texas Civil Practice & Remedies Code relates to lien on real property.”

In an effort to reconcile the above statutory provisions, El Paso County seeks an opinion regarding:

1. Can a bond forfeiture judgment obtained by a political subdivision of the state become dormant?
2. If a bond forfeiture judgment become dormant, may a County revive a dormant judgment at any time?
3. If the County is permitted to revive a judgment, may the County then file a lien based on said judgment?
4. If a Surety owes money on a bond forfeiture judgment in a Bail Bond Board County, is the Surety barred from writing bonds in a non-bail bond board county under the Code of Criminal Procedure §17.11(2) until such time as the judgment is satisfied, regardless of whether the judgment is dormant?

I respectfully request your opinion regarding these issues.

Sincerely,

A handwritten signature in cursive script that reads "Jo Anne Bernal". The signature is written in black ink and is positioned above the printed name.

Jo Anne Bernal
El Paso County Attorney