



**THE ATTORNEY GENERAL  
OF TEXAS**

Gerald C. Mann

~~FOUNDED BY J. J. HARRIS~~  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. A. E. Sutton  
County Auditor  
Palestine, Texas

Opinion No. O-2774

Re: Is property on which taxes have been paid subject to foreclosure to pay off bonds along with the property on which taxes have not been paid?

Dear Sir:

We have your letter of September 20, requesting our opinion on the following question:

"Where the citizens of an incorporated town vote bonds and taxes are levied for the payment of same, and some of the property owners in said town pay the taxes levied against their property but others do not, is the property on which the taxes have been paid subject to foreclosure to pay off said bonds along with the property on which the taxes have not been paid?"

The statutes do not authorize a lien against property subject to taxation to secure payment of general obligation tax bonds.

Article 826 of Vernon's Annotated Statutes provides that the governing body shall levy and collect a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of bonds which had been previously authorized by the qualified voters. Substantially the statute provides that bonds shall be secured by a levy of taxes on all taxable property located within such city, and the payment of such bonds is to be made out of funds collected from the levy provided by the governing body.

When the taxes have been paid by the taxpayer in accordance with the levy, the property against which such taxes have been levied is thereby discharged of further liability for the payment of such taxes. In the event the taxes levied and collected are insufficient, additional taxes may be levied in an amount calculated to pay the bonds, but it follows that unless the taxes levied become delinquent, the property is not subject to foreclosure for non-payment, for obviously there are no taxes due against said property.

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Article 7337 of Vernon's Annotated Civil Statutes provides that any incorporated city has the right to enforce the collection of delinquent taxes due it under the provisions of this chapter, which is the Acts of 1897, page 132, as amended. This law provided in substance that all suits to enforce the collection of taxes shall include all property owned on which delinquent taxes are due. In other words, the statutory tax lien created by the non-payment of taxes, legally levied, may be foreclosed only after such lien has been adjudicated by a court of competent jurisdiction in accordance with existing laws governing the foreclosure of tax liens in delinquent tax suits.

Property only being subject to foreclosure for non-payment of taxes, we are of the opinion that your question must be answered in the negative.

Trusting that this satisfactorily answers your inquire, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Clarence E. Crowe  
Clarence E. Crowe, Assistant

APPROVED OCT 4, 1940  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE  
BY: BWB, CHAIRMAN

CEC-s:wb