THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

Gerald C. Mann
PRICE DANIEL
ATTORNEY GENERAL

Honorable L. R. Thompson
County Auditor
Abilene, Texas

Opinion No. O-3402
Re: Exemption from taxation of land deeded to a college for the purpose of avoiding foreclosure of a mortgage thereon, the note and mortgage having been a part of the endowment fund of such college.

Dear Sir:

In your letter of April 9, 1941, you submit the following facts:

A certain college had endowment funds loaned on land and the mortgagor to avoid foreclosure deeded the land to the college.

You request our opinion as to whether such college is entitled to have the land thus acquired exempt from taxation for a period of two years after such acquisition.

Article VIII, Section 2, of the Constitution of Texas as adopted in 1928 provides in part as follows:

> "The Legislature may by general laws exempt from taxation . . . all buildings used exclusively and owned by persons or associations of persons for school purposes. . .; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void."

Article 7150, Revised Civil Statutes of Texas, describes the property which shall be exempt from taxation and Section 1 thereof, as amended in 1931, contains a description of the following property as being so exempt:

"All public colleges, public academies and all endowment funds of institutions of learning and religion not used with a view to profit and when the same are invested in bonds or mortgages and all such buildings used exclusively and owned by persons or associations of persons for school purposes; provided that when the land or other property has been or shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect bonds or mortgages in which said endowment funds are invested, that such exemption of such land and property shall continue for two years after the purchase of the same at such sale by such institutions and no longer."

A reading of the quoted constitutional and statutory provisions shows a very definite intention to limit and curtail the exemption of such endowment funds once the same have been converted into land. Evidently the thought was to keep at a minimum the amount of lands withdrawn from taxation by reason of school ownership. It was recognized that if such endowment funds should be invested in bonds or mortgages, with land as the security, the ultimate result would be that on some occasions the college would be forced to acquire the security in properly making use of and protecting the endowment funds. Thus it was meant to protect the endowment fund from taxation so long as it should be invested in bonds or mortgages and in the event it should be necessary for the protection of the fund to convert it into land then it was intended to permit the institution to have areasonable but comparatively short period of time within which to dispose of the land before the same should be again subject to taxation. However, both the Constitution and statute limited the exemption to land or other property acquired "under foreclosure sales." Viewed from the standpoint of the State and county and other taxing bodies the voluntary deeding of the land to the mortgagee is a different proceeding from a foreclosure sale. Under the former proceeding third parties—in whose hands the property would be taxable — are not given an opportunity to acquire title to such property, while in a foreclosure proceeding they would be. In both the Constitution and statute the intention appears that the exemption shall apply only in the event it is bought in at a foreclosure sale. Exemptions are to be strictly construed.

Our answer to your question is a negative one. We presume that the property thus acquired is not used exclusively for school purposes so as to bring it within another exemption provided in the above constitutional and statutory provisions.

Yours very truly
ATTORNEY GENERAL OF TEXAS
By (Signed) GLENN R. LEWIS
Assistant

APPROVED
APR 18,1941
s/ GROVER SELLERS
FIRST ASSISTANT ATTORNEY GENERAL

APPROVED Opinion Committee
By B.W.B. Chairman