



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-6013
Re: Distribution of money
collected at a tax sale,
in excess of the taxes,
penalty, interest and
cost due on the property
sold.

We have your letter of May 10th, in which you enclose a copy of a letter, addressed to you, from J. M. Fraley, Assessor-Collector, Wharton County, with reference to the distribution of money collected at a tax sale in excess of the taxes, penalty, interest and cost due on the property sold. We also have a copy of a letter dated June 7th, signed by J. M. Fraley, in which additional facts are stated.

The facts stated in Mr. Fraley's letter, as supplemented by his letter of June 7th, are briefly:

Wharton County, joined by the State of Texas and certain common school districts, filed a number of suits in the District Court of Wharton County to foreclose their tax liens. Judgments were granted to the plaintiffs for the amounts of the taxes due plus interest, penalty and costs. An order of sale was issued and in compliance therewith the land was advertized and sold. The property, in some cases, was purchased by individuals who paid more than the taxes, penalty, interest and cost due on the property.

Your question is: What disposition should be made of the excess thus obtained? We presume that the tax sales to which you refer were made under the authority of judgments

Honorable George H. Sheppard, page 2

obtained in accordance with the provisions of Article 7345b, Vernon's Annotated Civil Statutes.

Article 7328, Revised Civil Statutes of 1925, relating to the disposition of the proceeds received by the sheriff from the sale of land, sold under a judgment foreclosing a lien for taxes, provides in part, as follows:

" . . . and after the payment of the taxes, interest, penalty and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued to be retained by him subject to the order of the court for a period of two years, unless otherwise ordered by the court, after which time the court may order the same to be paid to the State Treasurer, who shall hold same in trust to be paid to the owner against whom said taxes were assessed; provided any one claiming the same shall make proof of his claim to the satisfaction of the State Treasurer within three years after the sale of said land or lots, after which the same shall be governed by the law regulating escheat. . . ."

Article 7328 was amended in 1927, and the words we have above underscored were omitted from the bill as passed by both houses of the Legislature. Said words were also omitted from the enrolled bill, and consequently from the printed statutes. This omission, had same been legally done in accordance with the Constitution of Texas, would have had the effect of so amending the Act of 1927 as to have caused same to read as it now appears in the printed statutes of Texas as Article 7328; in other words, the law would now be as same reads with the words underscored by us, omitted therefrom.

We have made a careful investigation of the facts surrounding this omission, and of the law applicable thereto. And from the applicable authorities we are of the opinion that this omission of the underscored words from the amendment of 1927 was of no legal force or effect, and that

Honorable George H. Sheppard, page 3

the underscored words, notwithstanding their omission from the amendatory act of 1927, remain, and may be properly considered, a part of said law.

We are forced to said conclusion by the following:

The caption of said amendatory act of 1927 reads as follows:

"An Act to amend Article 7328 (7689) of the Revised Civil Statutes of 1925, which Article relates to and provides for proceedings in tax suits and the manner provided by law in ordinary foreclosure suits in the district courts of this state; and which Amendment to said Article 7328 provides that sales contemplated in tax foreclosure suits shall be made in the manner prescribed for the sale of real estate under execution; and declaring an emergency." (See Laws of Texas 1927, Ch. 99, p. 260).

An inspection of said title, or caption, discloses that the purpose of the amendatory act, as disclosed by said title, is the SINGLE PURPOSE of providing "that sales contemplated in tax foreclosure suits shall be made in the manner prescribed for the sale of real estate under execution."

Said caption in no way mentions or indicates any purpose to amend the statute as the same would stand amended if the words underscored by us were left out of the law.

We thus have before us a situation where an amendatory act expresses a purpose, in its caption, to amend a law in one specific particular, thus limiting the amendment to that particular, but notwithstanding this limitation in the caption, then attempting to further amend the law by the omission therefrom of a provision not mentioned in the caption, and not germane to any purpose named in the caption.

The rule of construction applicable to this situation is as follows:

"Although an act may be amended in any germane particular by an amendatory act, the title

Honorable George H. Sheppard, page 4

of which merely refers to the act or article sought to be amended without specifying in what the amendment consists, yet when such title states the particular respect in which the amendment consists, any amendment not germane to that specified is invalid as being repugnant to the invoked constitutional provision." (See Rutledge, et al. v. Atkinson, et al., 101 S.W. (2d) 376; Ward Cattle and Pasture Co. v. Carpenter, 200 S.W. 521; Arnold v. Leonard, 273 S.W. 799; Texas-Louisiana P. Co. v. Farmersville (Tex. Com. App.) 67 S.W. (2d) 235; Ex parte Heartsell, 38 S.W. (2d) 803; Landrum v. Centennial Rural High School District No. 2, 134 S.W. (2d) 363; Also see 39 Tex. Jur. section 48, and the cases therein cited and in the supplements thereto; also see Constitution of Texas, Article 3, section 35).

It is plain to us that the omission referred to by us is, under the authorities above cited, void and of no effect under the Constitution of Texas, said omission not being germane to the purpose of the amendatory act. It necessarily follows that the omitted words (which we have underscored above) remain and are a part of the law, notwithstanding their said omission from the amendatory act of 1927.

We are fortified in the conclusion just stated by the decision of the Austin Court of Civil Appeals in the case of Booty, et al. v. State. This decision was rendered in February of 1941. The opinion was written by Mr. Justice Blair. In the Booty case, the court said that "the sole question in the case involves a construction of Art. 7328 and the methods of sales of property for taxes therein provided." In the opinion, the court construed said Article 7328 to be and read as we have construed it in this opinion to be and to read. The court, in commenting upon the provision of said Article 7328, in part said:

" . . . where there are bidders for the property and it is sold for more than the amount of the taxes, the excess shall be deposited with the

Honorable George H. Sheppard, page 5

clerk of the court pending the two year period for redemption of the land by the owner, to be disposed of by the judgment; that unless it is redeemed within that time, then the clerk shall deposit the excess with the State Treasurer, who shall hold it in trust to be paid to the owner against whom said taxes were assessed, provided such owner or the one claiming the same shall make proof of claim to the satisfaction of the Treasurer within three years after the sale of the land, after which time the fund is subject to the law of escheat." (See *Booty, et al. v. State*, 149 S.W. (2d) 216).

Mr. Justice Blair, in said opinion, assigned no reasons for treating the words omitted from the 1927 amendment as being still a part of the law. But we cannot assume that the Court of Civil Appeals so did without good reason. Rather, we shall assume that the court was impelled to its conclusion by the same line of reasoning which has guided us to the same conclusion in this opinion.

In 1937 the Legislature enacted additional legislation relating to the collection of delinquent taxes which is now Article 7345b, V.A.C.S. In regard to the disposition of the excess amount of money received from the "first sale" where the purchaser is other than a taxing unit, Section 8 of the Act provides:

"No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly, or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against

Honorable George H. Sheppard, page 6

such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgments against said property, shall be paid to the parties legally entitled to such excess."

Section 13 of the Act provides:

"The provisions of this Act shall be cumulative of and in addition to all other rights and remedies to which any taxing unit may be entitled, but as to any proceeding brought under this Act, if any part or portion of this Act be in conflict with any part or portion of any law of the State, the terms and provisions of this Act shall govern as to such proceeding. The provisions of Chapter 10, Title 122 of the Revised Civil Statutes of 1925 shall govern suits brought under this Act except as herein provided."

In view of the provisions of this section it becomes apparent that Article 7328 and Article 7345b should be read and construed together. Section 8 of Article 7345b provides, simply, that in the case of any excess in the proceeds of sale over and above the amount necessary to pay the cost of suit and sale and other expenses and to fully discharge the judgments against said property it shall be paid to the parties legally entitled to such excess. To determine who is legally entitled to such excess we must refer to Article 7328. By the provisions of that Article, we find that the sheriff must pay the excess to the Clerk of the Court out of which said execution or other final process issued to be retained by him, subject to the order of the Court, for a period of two years, unless otherwise ordered by the Court, after which time the Court may order the same to be paid to the State Treasurer, who shall hold the same in trust to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the State Treasurer within three years after the sale of said land or lots, after which the same shall be governed by the law regulating escheat.

Honorable George H. Sheppard, page 7

We believe the procedure outlined above is to be followed in all instances where the sheriff has an excess of money derived from the "first sale."

In regard to the disposition of excess funds collected where the property is bid in by one of the taxing units at the "first sale" and held for the two-year period and later sold at the "second sale," we refer you to this department's Opinion No. 0-6000, copy of which is enclosed.

Trusting this fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Benjamin Woodall*
Benjamin Woodall
Assistant

By *H. T. Bob Donahue*
H. T. Bob Donahue

HTBD:db

Enclosure

APPROVED OCT 2 1934
Carl H. Kelly
B