



**THE ATTORNEY GENERAL
OF TEXAS**

GROVER SELLERS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Hon. Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Mr. Sheppard:

Opinion No. 0-7076

In Re: Does a purchaser in a tax foreclosure sale take such property free and clear of the taxes that became delinquent after the suit was filed?

In your letter of Jan. 29, 1946, you request the opinion of this department upon the question contained therein, which for the purpose of giving the facts upon which our opinion is based we quote:

"The Delinquent Tax Collector for Floyd County filed suit for all delinquent taxes on a certain piece of property in Floyd County up to and including the year 1942. The suit was filed in the fall of 1943. The current taxes for 1943 became delinquent in February of 1944. The Delinquent Tax Collector in August, 1944, prosecuted his suit for judgment without amending his petition or including the taxes that became delinquent February 1, and his judgment taken in August, 1944, did not include the taxes for that year.

"Everything in the proceedings was regular, except for that one particular. The property in this case sold for the adjudged value which was less than the total amount of delinquent taxes against the property.

"Question: Was such judgment a valid judgment and did the purchaser of said judgment take such property free and clear of the taxes that became delinquent after the 1943 suit was filed?

"In another case the suit was filed after February 1, 1945, but before July 1, 1945, and the 1944 taxes were not included in the petition in this suit. Judgment was not obtained in this suit until after July 1, 1945. Would the same rule apply in this case?"

For the purpose of this opinion it is only necessary that we consider your questions in the light of the provisions of Article 7345b of V. A. C. S. The last amendments to Article 7345b were enacted by the 47th Legislature, and are codified as Sections 2, 5 and 10 in the pocket supplement of V. R. C. S., page 147; Section 10 is the pertinent provision applicable to the questions posed in your request.

The validity of Article 7345b and the presently existing amendments thereto, and especially Sections 2, 5 and 10, is no longer an open question. They have successfully withstood all attacks, and the public policy of the State emanating from these statutes is now definitely defined and well-understood. The primary purpose of this article was to prevent multiplicity of suits by the inclusion of all taxing units in a suit brought by any one or more of such units, and in addition to this to afford purchasers of tax titles security from a diversity of claims of numerous taxing units. *City of El Paso v. Forti*, 181 S. W. (2d) 579.

Of course the primary concern of a purchaser at a tax sale foreclosing the lien of the respective taxing units, parties to the suit, is that the property so purchased shall thereafter be free from the liens fixed under the Constitution and the statutes to secure the payment of the tax.

Sec. 10 of this article reads as follows:

"The purchaser of property sold for taxes in such foreclosure suit shall take title free and clear of all liens and claims for taxes against such property delinquent at the time of judgment in said suit to any taxing unit which was a party to said suit or which had been served with citation in said suit as required by this Act." (Emphasis ours)

Note that the statute says, "delinquent at the time of judgment." We think this means just what it says, and includes all taxes delinquent at the time of the judgment, whether embraced in the petition or not as to the taxing units, parties to the suit or which had been served with citation in said suit. We said in opinion No. 0-2175:

"The County and State will lose their liens for 1939 delinquent taxes in those cases where they (taxing units) are parties to a suit wherein a judgment is taken that excluded the said 1939 delinquent taxes under the plain provision of Sec. 10 of Art. 7345, supra." (parenthesis ours)

We have not departed from that statement in any opinion subsequently written upon the subject; but to the above statement should be added that the purchaser also takes the property free and clear of all liens and claims for taxes in those cases where they, the taxing units, have been served with citation in said suit.

The case of Mexia Independent School District v. City of Mexia, (Supreme Court) 133 S. W. (2d) 118, is helpful in understanding the problem involved in your question, and from this opinion we quote:

"We recognize that it is possible under the act in question, for such representatives, by their carelessness or otherwise, to fail to properly foreclose the liens held by the taxing units which they represent, but this is a danger inherent in all governmental functions performed by human agents."

It is presumed that all public officials will honestly perform their official duties, (Anderson v. Polk, 117 Tex. 73, 297 S. W. 219; and Mexia Independent School District v. City of Mexia, supra) and these statutes should be construed in the light of that presumption. A good faith purchaser under the mandates of Sec. 10, supra, has a right, we think, to rely upon this well recognized presumption. We are not to be understood as condoning dereliction and carelessness of public officials in the performance of their duties, but such cannot be given the effect to override the plain terms of Sec. 10, supra, that "The purchaser of property sold for taxes in such foreclosure suit shall take title free and clear of all liens."

Since you state that everything in the proceedings was regular except the omission of one year's delinquent taxes omitted from the petition upon which the judgment was predicated, it follows from what we have heretofore said that the judgment was valid, and the purchaser under said judgment took the property free and clear of all liens, including the delinquency not included, which occurred after the suit was filed as to the taxing units, parties to said suit or which had been served with citation in said suit.

You state:

"In another case the suit was filed after February 1, 1945, but before July 1, 1945, and the 1944 taxes were not included in the petition in this suit. Judgment was not obtained in this suit until after July 1, 1945. Would the same rule apply

in this case?"

The same rule would apply as in the first instance.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/L. P. Lollar
L. P. Lollar
Assistant

LPL:AMM:wc

APPROVED MARCH 15, 1946
s/Grover Sellers
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee BY BWB Chairman