



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

December 21, 1954

Honorable J. W. Edgar
State Commissioner of Education
Texas Education Agency
Austin, Texas.

Opinion No. MS-166

Re: Retention of mineral
rights in sale of land
acquired by an inde-
pendent school district
in a delinquent tax
suit.

Dear Dr. Edgar:

In requesting this opinion of the Attorney General you stated that in 1946 an independent school district acquired a city lot by foreclosing a tax lien for the benefit of itself and other taxing units. The period of redemption being passed, the school district now desires to sell the lot to a ready purchaser. The district is prepared to prorate the proceeds of the sale among the taxing units having liens on the land. However, the school district intends to reserve to itself a one-half (1/2) of the mineral rights in the land when selling it. You ask if this may be done legally.

The controlling statute is Section 9 of Article 7345b, Vernon's Civil Statutes, which reads, as here applicable:

" . . . The taxing unit may sell and convey said property so purchased by it . . . at any time in any manner determined to be most advantageous to said taxing unit or units, either at public or private sale, subject to any then existing right of redemption; and the purchaser of the property at any such sale shall receive all the right, title and interest in said property as was acquired and is then held by said taxing unit under such tax foreclosure sale to it. . . ."

In a recent case the Supreme Court construed this section. It held that deeds executed under Section 9 of Article 7345b purport to convey only such interest as the taxing units have in the land. Such deeds have been construed by our courts to be mere quitclaims. "Article 7345b was enacted by the legislature with full knowledge of the construction our courts have given such deeds. It must be presumed that the legislature acted in the light of that knowledge and knew the legal effect of the language it used in directing the type and form of deed to be executed by

Hon. J. W. Edgar, Page 2 (MS-166)

taxing units." Woodward v. Ortiz, 150 Tex. 75, 237 S.W. 2d 286, 293 (1951).

"Although a quitclaim deed in the usual form does not purport to convey land in fee simple as distinguished from the grantor's title thereto, if any, it does ordinarily transfer to the grantee all right and interest, as well as all title, which the grantor may have in and to the premises therein described." Williams v. Woods, 204 S.W.2d 203, 204 (Tex.Civ. App. 1947); Leatherman v. Holt, 212 S.W.2d 1004 (Tex.Civ.App. 1948).

Consequently, since the Legislature has directed that the "type and form of deed to be executed by taxing units" shall be a quitclaim of all the right, interest and title held by the taxing unit in the land sold, the independent school district may not reserve to itself a one-half (1/2) of the mineral rights by executing some other type and form of deed. "Where a power is granted, and the method of its exercise prescribed, the prescribed method excludes all others, and must be followed." Weaver v. Robison, 114 Tex. 272, 268 S.W. 133, 141 (1924); Foster v. City of Waco, 113 Tex. 352, 255 S.W. 1104, 1105 (1923).

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
Billy E. Lee
Assistant

BEL:cs:zt