



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

October 22, 1968

Honorable James E. Barlow
Criminal District Attorney
Bexar County, Texas
County Courthouse
San Antonio, Texas 78204

Opinion No. M-294

Re: Persons authorized to execute deeds for taxing units in private sales made pursuant to Article 7345b, Vernon's Civil Statutes.

Dear Mr. Barlow:

Your request for an opinion reads, in part, as follows:

"As provided for in Article 7345b, Sections 8 and 9, VACS, governmental agencies in Bexar County, Texas, average five private sales per month for less than the amount of the judgment or the adjudged value of property, acquired by these governmental agencies at the monthly Sheriff's sales. The issue in question is: 'Who is authorized to sign deeds in behalf of the State of Texas and Bexar County in these private sales?'" (Emphasis added.)

The applicable portions of Article 7345b, Vernon's Civil Statutes, read as follows:

"Sec. 9. . . . The taxing unit may sell and convey said property so purchased by it . . . but such property shall not be sold by the taxing unit purchasing the same, at private sale, for less than the adjudged value thereof, if any, as established in the tax judgment, or the total amount for which such judgment was rendered against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment shall have been found to have tax liens against said property. All such consents shall be evidenced by the joinder in the conveyance by the

consenting taxing units, acting by the officers herein authorized to give such consents. Consent to such sales in behalf of the State of Texas may be given by the County Tax Collector of the County in which the property is located; and consents on behalf of other taxing units may be given by the presiding officers of their governing bodies. Deeds executed hereunder by taxing units shall be executed in their behalf by the presiding officer of their governing body and whose authority to so act in any given case shall be prima facie presumed If the State of Texas is the taxing unit which purchased said property at the tax foreclosure sale, the Commissioners Court of the county in which the property is located shall have authority to act for the State of Texas in making private sales and conveyances of said property, as herein provided, or in requesting the Sheriff, or in appointing a Commissioner, to make public sale thereof, and in receiving and distributing the proceeds of such sales; and all sales and conveyances made in behalf of the State of Texas by the Commissioners Court, or made by the Sheriff or any Commissioner appointed by the Commissioners Court, under the provisions hereof, shall operate to transfer to the purchaser at such sale all right, title and interest acquired or held by the State of Texas as purchaser at the tax foreclosure sale. Any taxing unit, Sheriff, or Commissioner appointed by a taxing unit, making any sale under provisions hereof shall execute and deliver to the purchaser at such sale a deed of conveyance, conveying all right, title and interest of all the taxing units interested in the tax foreclosure judgment in and to the property so sold;" (Emphasis added.)

In those cases where a taxing unit other than the State of Texas is the purchaser at the tax foreclosure sale, the taxing unit which purchased at the tax foreclosure sale, acting in the role of grantor, by and through the presiding officer of its governing body, should execute and deliver a deed conveying all right, title and interest of all the taxing units interested in the tax foreclosure judgment in and to the property sold.

When the State is the purchaser at the tax foreclosure sale, the State acting in the role of grantor, by and through the commissioners court of the county in which the property is located should execute and deliver the same type of deed to the purchaser. In each sale, if they so desire, when authority and approval is given by the commissioners court for the sale and conveyance, the commissioners court may empower the county judge, as their presiding officer, to execute the conveyance in behalf of the State of Texas and the court. Such action should be reflected in the minutes of the court.

When a taxing unit other than the State of Texas is the purchaser at the tax foreclosure sale and acts as grantor in the deed to the purchaser, consent of all other taxing units involved should be evidenced by their joinder in the conveyance, with the State of Texas acting by and through the county tax collector of the county in which the property is located, and with the other taxing units acting by and through the respective presiding officers of their governing bodies; and in such cases the tax collector of the county is the only official authorized to act for the State in giving the latter's consent.

When the purchaser at the tax foreclosure sale is the State of Texas and it acts as grantor in the deed to the purchaser, the same rules of consent and joinder in the conveyance apply, except that the consent of the State of Texas is evidenced through the actions of the commissioners court; hence the consent and joinder of the county tax collector in the conveyance in that instance is not required.

Our opinion herein is supported by and in harmony with Attorney General's Opinion No. V-695 (1948), wherein the county was purchaser, and it was held that, "If the land is sold at private sale, the Commissioner's Court acts as a body in making such sale, and the 'presiding officer' of the court should execute the deed of conveyance."

"Conveyance" is defined in Texas Electric Ry. Co. vs. Neale, 244 S.W.2d 329 (Tex. Civ. App. 1951, rev. on other grounds, 151 Tex. 526, 252 S.W.2d 451), from which we quote:

"The terms 'deed,' 'conveyance' and 'deed of conveyance' are frequently used

interchangeably to denote the same legal concept. Each is commonly understood to mean an instrument in writing whereby the grantor conveys to the grantee some right, title or interest in or to real property.

Therefore, in view of the above considerations, the consent contemplated by Article 7345b should be evidenced by the joinder of the consenting party in a deed to the purchaser. The better practice would be for the consenting party or parties to join in the execution and delivery of the deed which is made by the taxing unit which purchased at the foreclosure sale. However, it is the opinion of this office that the intent of the Legislature can be effectively carried out by the required consent being evidenced through the execution and delivery of a separate instrument of conveyance which makes reference to, joins in, and expressly adopts the conveyance made by the taxing unit which purchased at the tax foreclosure sale.

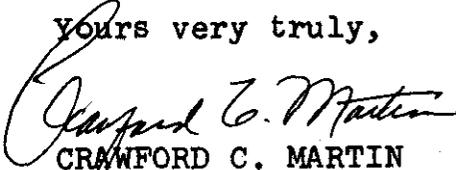
SUMMARY

In sales by taxing units pursuant to Article 7345b, Vernon's Civil Statutes, when the purchaser at the tax foreclosure sale is a unit other than the State, a deed of conveyance should be executed and delivered by that unit, and with the consent of the State of Texas to be evidenced by the joinder in the conveyance by the county tax collector of the county in which the property is located, and with the consent of all other units to be evidenced by the joinder in the conveyance by the presiding officers of the governing bodies of such units. When the State of Texas is the purchaser at the tax foreclosure sale, the State, acting by and through the commissioners court of the county in which the property is located, should execute and deliver the same type of deed to the purchaser; and the same rules of consent and joinder in conveyance apply in such instance, except that the consent of the State is evidenced through the actions of the commissioners court, and the consent

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and joinder of the county tax collector
in the conveyance is not required.

Yours very truly,


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APPROVED:

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