



CAMERON COUNTY DISTRICT ATTORNEY

CAMERON COUNTY COURTHOUSE
974 E. HARRISON STREET · BROWNSVILLE, TEXAS 78520

Yolanda de León

County (Criminal District) Attorney

February 23, 1999

RECEIVED

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Opinion Committee

Office of the Attorney General
Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General's Opinion Concerning the Application of
V.T.C.A., Property Tax Code § 34.06(b).

RQ-0031
FILE # ML-40698 → 9c
I.D. # 40698

Dear Sirs:

Our office received a request for an opinion regarding the above section of the Property Tax Code by a county official. This office researched the issue presented and provided an opinion. It appears that the issue is still unresolved and an Attorney General's Opinion is being requested.

QUESTION PRESENTED

Are remaining proceeds of the sale of property "struck off" to the County in 1993 and sold by the County in 1998 to be distributed according to V.T.C.A. Property Tax Code §34.06(b) before or after the January 1, 1998 amendment.

BRIEF

FACTS PRESENTED

The following were the facts presented to this office: the County took a judgment for property taxes on a piece of real estate in April 1993. "In July 1993 at Sheriff's sale the subject tract was sold to or "struck off" to the County on behalf of itself and the other taxing entities involved for a total of \$285,874.07. This total included the judgment amount, interest on the judgment from the date of judgment to the date of sale, accumulated taxes from the date of judgment to the date of sale, and costs of sale. On August 25, 1997 the County entered into an agreement to resale this property for \$315,000.00. But the property was not transferred (deed recorded) until June 3, 1998, because financing was held up until EPA clearance was received. The costs of resale, maintenance, and the judgment totaled \$304,505.84. The "remaining balance" for distribution is \$10,494.16."

CONCLUSIONS AND FINDINGS

After a thorough review of the relevant statutes, case law, attorney general opinions and session laws this office found as follows:

1. In 1993, the subject property belonged to the County. Its title presumably included any potential excess funds, subject only to the right of redemption. "The taxing unit takes title to the property for the use and benefit of itself and all other taxing units that established tax liens in the suit. The taxing unit's title includes all the interest owned by the defendant, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption." V.T.C.A. Property Tax Code §34.01(c).
2. In 1995 the Texas Supreme Court held in *Syntax, Inc. v. Hall*, 899 SW2d 189 (Tex. 1995), that the taxing entity had to place excess funds of "struck off" property in the registry of the court as per §34.06(b) of the Property Tax Code. Both the trial court and the appeals court had held that the taxing entities could keep all the proceeds of the sale of "struck off" property.

3. The 75th Legislature in 1997 amended §34.06(b) of the Property Tax Code twice. The Senate version which became effective September 1, 1997 merely modified §34.06(b) to allow the taxing unit to deduct property maintenance and preservation expenses. The statute still retained the language referring to §34.02 of the Property Tax Code, which under *Syntax*, requires excess funds to be deposited in the registry of the court for redemption by the original owner. The House version which became effective January 1, 1998 specifically deleted any reference to §34.02 and mandates the distribution of all the proceeds of the sale to the participating taxing units after expenses are deducted for maintenance, preservation and sale costs.


It appears that the original legislative intent was that a taxing unit keep all the proceeds of the sale of a property when the property is “struck off” to the taxing unit and it subsequently sells it. When the *Syntax* case changed that intent, the Legislature at the next session amended the statute to make its intent clear.

CONCLUSION

Since the property was not actually sold and the funds received until June 3, 1998 the controlling statute is the one effective January 1, 1998. Therefore all proceeds of the sale of the property should be distributed among the taxing units proportionately, and after all applicable costs have been deducted in accordance with said statute.

Submitted

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