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OPINION COMMITTEE

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RQ-1182-GA

January 27, 2014

The Honorable Gregg Abbott
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Via CMRRR

Re: Whether a taxing unit may, on behalf of itself and the other participating taxing units, reserve mineral interests on property which is acquired through tax foreclosure and then resold pursuant to §34.05, Texas Tax Code.

Dear Attorney General Abbott:

On behalf of Karnes County, Texas ("the County"), and pursuant to section 402.043 of the Texas Government Code, I am requesting an opinion concerning a transaction between various taxing entities in Karnes County involving the reservation of mineral interests by the taxing units, essentially severing the mineral interests from the remaining fee title, and reselling the property without the mineral interests.

FACTUAL BACKGROUND

This opinion request involves a specific plot of real property in Karnes City, Texas which was the subject of a tax sale. Karnes City ("the City") instituted a tax foreclosure sale and on June 1, 2010, the property, some 4.383 acres, was struck off by the City. The City apparently held the property in trust for the various taxing entities. On or about July 26, 2011, representatives from the County approached the City about purchasing the property for the new Karnes County Jail. The property was then sold to the County for the amount of the delinquent taxes.

Subsequent to the sale of the property, the County discovered that the deed did not include the mineral interests that were owned by the Defendant in the tax sale. It appears that the

City, relying on a legal opinion (a true and correct copy of which is attached as Exhibit "A") reserved the mineral interests from the sale to the County.

DISCUSSION

Although the City relied on a legal opinion in severing out the mineral interests, the County takes the position that the act of reserving the mineral interests was inconsistent with prior Attorney General Opinions and current Texas Tax Code provisions.

The Legal Opinion:

The City relied on a legal opinion from Attorney R. Bruce Medley, a copy of which is attached. The opinion is based upon the statutory interpretation of former Article 7345(b), Sec. 9, VATS (repealed 1979) and the re-codification of very similar language in § 34.05 of the Texas Tax Code. The relevant provisions are as follows:

Article 7345(b), Sec. 9, VAT:

"... and the purchaser of the property at any such sale shall receive all of 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" (emphasis added)

Section 34.05

"the presiding officer of a taxing unit . . . or the sheriff or constable selling real property under Subsections (c) and (d) shall execute a deed to the property conveying to the purchaser the right, title and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property." (emphasis added)

The legal opinion cites OP ATTY GEN V-1302(1951), based on the language from Article 7345(b), where the Attorney General's opinion was that the mineral rights could not be severed and the entire property must be resold as a whole. The legal opinion relies on what is represented to be a common English interpretation of the change between the words "and" and "or."

However, the precise language of Section 34.05 indicates that all of the right title and interest in the property must be conveyed to the purchaser. Nowhere in Section 34.05 is there any provision for severing the mineral interests out from the deed. This position is consistent with OP ATTY GEN V-1302(1951). This approach is also consistent with other parts of Section 34.01 of the Texas Tax Code:

"The taxing unit to which the property is bid off 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 use and possession of the property,** subject only to the defendant's right of redemption. . . " 31.02(k) (emphasis added)

"The deed vests good and perfect title in the purchaser or the purchaser's assigns to the interest owned by the defendant in the property subject to the foreclosure, including the defendant's right to the use and possession of the property, subject only to the defendant's right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before

January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished in the judgment foreclosing the tax lien, and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose....”
34.01(n) (emphasis added)

These sections clearly state that **all** of the interest owned by the defendant prior to the foreclosure sale is vested in good and perfect title to the purchaser and the purchaser’s assigns. Section 3102 does not contain any authorization to allow the City to peel off the mineral interests and retain them.

Moreover, the Tax Code provides purchasers to rely on the tax sale to vest all of the title in the purchaser:

“... The purchaser may conclusively presume that the tax sale was valid and shall have full title to the property free and clear of the right, title, and interest of any person that arose before the tax sale, subject only to recorded restrictive covenants and valid easements of record set forth in Section 34.01(n) and subject to applicable rights of redemption.” 34.08(b) (emphasis added)

Case law also supports the position that a subsequent sale transfers all the interest held by the defendant in the foreclosure suit. “Under the Texas Tax Code, the enforcement of a tax lien and subsequent sale extends to the interest held by the party subject to foreclosure.” *Montgomery County v. Veterans Land Bd. of Texas*, 342 S.W.3d 219, 224 (Tex. App. –Beaumont 2011).

CONCLUSION

Karnes County believes that Section 34.05 of the Tax Code requires that the taxing unit reselling property that was subject to a tax lien foreclosure must transfer all of the property, including any mineral interests, to a subsequent purchaser. Karnes County hereby respectfully requests an opinion pursuant to section 402.043 of the Texas Government Code.

A handwritten signature in cursive script that reads "Herb Hancock". The signature is written in dark ink and is positioned above the printed name and title.

Herb Hancock
Karnes County Attorney