



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER

Attorney General

November 19, 1975

ATTORNEY GENERAL OPINION NO. 75-434

Terry J. Malone
Assistant County Attorney
Ford County Courthouse
Dodge City, Kansas 67801

RE: K.S.A. 79-2803 and K.S.A. 1974 Supp. 58-401

Synopsis: Whenever real estate sells for more than the judgment lien for taxes, interest, penalties and costs in a tax foreclosure suit, the excess shall be ordered by the court paid upon due proof to the owner or party entitled thereto. After the property has been held for two years, and is unclaimed, the money shall be handled as provided in the general statute pertaining to escheats.

Dear Terry:

You say that in a tax sale in your county a property brought \$1,800.00 more than taxes, interest, penalties and costs. You say that you cannot locate the previous owner. You ask what should be done with the excess.

K.S.A. 79-2803 (last paragraph) provides:

"If any lot, tract or piece of real estate sells for more than the judgment lien for taxes, interest, penalty and charges plus its share of the costs, charges and expenses of the proceedings and sale, such excess shall be ordered by the court paid upon due proof to the owner or party entitled thereto."

This statute clearly covers your situation.

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If more than two years pass, and the money is unclaimed, then the procedure outlined in K.S.A. 1974 Supp. 58-401, for the escheat of undistributed moneys, should be instituted.

It is true that K.S.A. 79-2805 provides an apportionment procedure where the proceeds of a tax foreclosure sale "shall not equal or shall exceed the entire tax lien." Also, K.S.A. 79-2915 provides for distribution of the "proceeds", without mentioning any excess. There are probably many instances where bids at tax foreclosure auctions, being in round numbers, vary insignificantly from the exact tax lien. It is noted that even in the escheat statute, K.S.A. 1974 Supp. 58-401, the first \$100.00 is always left in the county.

However, this is an unusual and sizeable excess-- \$1,800.00. If it were distributed to the taxing bodies, and the owner later appeared, there does not appear to be any procedure for the taxing districts to pay this money back.

In our opinion K.S.A. 1974 Supp. 58-401 should be followed in this instance.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/CJM/cgm