



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 26, 1977

ATTORNEY GENERAL OPINION NO. 77-167

James M. Milliken
Cheyenne County Attorney
101 W. Washington Street
St. Francis, Kansas 67756

RE: Taxation - Tax Foreclosures - Judgment Must
Include Current Year Taxes

SYNOPSIS: The purchaser at a tax sale is entitled to a deed conveying a clear title good against the world. Any unpaid current taxes and interest thereon, which have accrued between the time the action in foreclosure was begun and the time the cause was ripe for judgment, should be computed and included in the amount of judgment in rem.

* * *

Dear Mr. Milliken:

You say you have filed a tax foreclosure suit in Cheyenne County against 283 tracts, computing the known taxes due against them up to and including the 1976 taxes. The suit was filed April 28, 1977. Judgment will probably be taken on July 5, 1977 and the sale will be sometime in mid-August, 1977. You ask who will be responsible for paying 1977 taxes? You point to K.S.A. 1976 Supp. 79-2804 which provides the purchaser at a tax sale will receive a fee simple title.

The 1977 taxes should be computed prior to the July 5, 1977 judgment in rem, and included in that judgment, so that when the sale takes place in August, 1977 the purchaser will buy the property free and clear of any tax lien for 1977 and all prior year taxes.

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There is a Kansas Supreme Court case right on this point. It is Shawnee County Comm'rs. v. Abbott, 155 Kan. 154, 123 P.2d 318 (1942) and it is here quoted in length:

"It is a laborious work of many weeks for the county attorney and other county officials and employees to get the factual data together for inclusion in such a tax foreclosure suit. And of necessity, before judgment could regularly be entered in the action, the factual situation as to taxes, interest, and charges would be in constant change, so that if judgment should be withheld until the petition could be amended or supplemented to bring it up to date, it would inevitably occur that the factual situation would again be changed before judgment could be entered. This would bring to naught the comprehensive statutory scheme supplied by the legislature to enable a county to realize on its tax liens and to get the long lists of properties of delinquent taxpayers off its hands and into the hands of new owners ready, willing and able to pay the taxes thereon, and thus ameliorate the perplexing financial problems of county government.

The statute authorizing the foreclosure action as amended by G.S. 1941 Supp. 79-2801 does not require perfect precision of pleading in respect to the "taxes, charges, interest and penalties," on each parcel of land on which the county has a lien but only that such statement be correct "as far as practicable." Plaintiff's petition clearly satisfied that requirement. In no tax foreclosure case, nor in any other lawsuit, is it possible when the action is filed to allege exactly what miscellaneous charges and costs will have to be included in the judgment. The tax foreclosure statute contemplates this. It provides:

"It shall be the duty of such district court, in as summary way as possible, to investigate and decide what taxes shall have been legally assessed and charged on such tract, lot, or piece of real estate, and to render judgment therefore together with the interest, charges and penalty thereon as provided by law, to the date of such judgment, ..."
(G.S. 1941 Supp. 79-2803).

It should also be kept in mind that from the first day of November the current taxes assessed become a lien on real property, and the tax foreclosure statute has a provision which recognizes this, where it provides that when the sale following judgment in foreclosure of liens on properties bid in by the county for delinquent taxes, the county board may direct the sheriff to bid in the property for the county in the event any parcel of land does not sell for an amount equal to the entire lien for taxes, penalties, interest and costs. (G.S. 1941 Supp. 79-2804). What could be meant by the "entire" lien except a lien which would include the lien for current taxes, and how would the sheriff know that the highest bid was not equal to the amount of the entire lien unless it was incorporated in the judgment? Moreover, when the property has been sold and the sale confirmed, the purchaser is entitled to a deed (G.S. 1941 Supp. 79-2804) conveying a clear title good against all the world (Van Doren v. Etchen, 112 Kan. 380, 211 Pac. 144; Rathbun v. Williams, 154 Kan. 600, 121 P.2d 243). Who would buy if his purchase was subject to current taxes, interest and penalties, the amount of which would have to be guessed? To insure the grantee a clear title unencumbered by current tax liens, the statute makes it the duty of the county treasurer to cancel all taxes charged against the real estate which has been sold and conveyed pursuant to the sale in foreclosure and confirmation thereof. (G.S. 1941 Supp. 79-2805).

This court holds that the unpaid current taxes and interest thereon which accrued between the time the action in foreclosure was begun and the time the cause was ripe for judgment should be included in the amount of judgment in rem rendered in favor of plaintiff. So that this may be done this cause is remanded to the district court with instructions to modify its judgment in accordance with the views herein expressed." (pp. 158-159).

Prior to July 5, 1977, you should ask the County Clerk to prepare a list of the 283 tracts involved in your suit giving for each the assessed value shown on the current 1977 tax rolls. Then, the County Treasurer, using the 1976 levies, can compute the 1977 taxes. This goes "as far as practicable" to arrive at the current year taxes in mid-year when the 1977 tax levies have not been established. It is an accepted statutory procedure and is used in K.S.A. 79-1804 when taxes need to be computed in mid year.

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Then, on July 5, 1977 when the judgment is taken, this additional amount should be added to each tract, under K.S.A. 79-2803, and judgment rendered.

It is true that the 1977 tax lien becomes effective only on November 1, 1977 when the tax statements are sent out. K.S.A. 79-1804. But this is only the final act. This lien relates back to January 1, 1977 and no subsequent sale or transfer will relieve the owner on January 1 from the payment of the tax. K.S.A. 79-309. In addition, the grantee in mid-year assumes liability for a tax lien when he buys prior to November 1, K.S.A. 79-1805. If the District Court is to order a sale, giving the purchaser clear title, as the statutes contemplate, it is necessary that in the judgment the 1977 taxes be included.

This procedure is not available to owners who redeem under K.S.A. 79-2803 prior to judgment. They simply pay up all their back taxes, penalties and interest. Their 1977 tax statement will then come out to them as usual on November 1, 1977.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw