



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 6, 1978

ATTORNEY GENERAL OPINION NO. 78- 176

Jerry D. Fairbanks
Wallace County Attorney
Wallace County Courthouse
Sharon Springs, Kansas 67758

RE: Taxation - Personal Property - Lien - Effect
of Repossession and Foreclosure Sale.
K.S.A. 79-2109, 79-2110

SYNOPSIS: Ad valorem taxes on personal property become a lien on the property itself. One, who repossesses personal property, takes it subject to outstanding property taxes. The Court order of repossession does not terminate the tax lien, nor will a sale. Such lien follows the property, and at any time, within three years from the time such taxes became originally due and payable, the taxes may be collected by an in rem proceedings against the property itself in the hands of the purchaser or purchasers, excepting only when the personal property has been sold in the ordinary course of retail trade. The reposessor must pay the taxes on the specific personal property, and is liable to his transferee for such taxes if they are paid to protect the property. But the reposessor is liable only for the taxes levied upon the property repossessed, not the total amount of personal property tax owed by the borrower.

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Dear Mr. Fairbanks:

You state that a local bank repossessed eight items of personal property which were collateral under a UCC loan on February 18, 1978 by a court foreclosure order. On February 23, 1978, a personal property tax warrant was served on the bank by the Sheriff for the total amount of personal property taxes owed by the borrower. You do not state the nature of the personal property. You ask if the bank is liable to pay the taxes on the items repossessed, or is it liable for the total amount of the tax warrant for taxes owed by the borrower?

Ad valorem taxes on personal property are a lien on the property itself, and follow the property into the hands of transferees, excepting only when the purchaser buys the property in the ordinary course of retail trade. This rule holds when a business is sold. K.S.A. 79-2109. The taxes follow the inventory by class. This rule applies to the transfer of individual items of personal property, with the additional exception that the in rem collection must be executed within three years after the taxes became originally due and payable. K.S.A. 79-2110.

A bank, foreclosing a mortgage against personal property, is a transferee covered by these statutes. Foreclosure has no effect on tax liens, because the lender merely steps into the shoes of the borrower, and must pay all taxes owed against the specific personal property repossessed.

"It is well known that mortgage liens, materialmen's and mechanics' liens are inferior to liens for taxes. One who takes such a lien knows this at the time of taking. It is such liens as these over which the lien for taxes has priority."
State ex rel., v. Wyandotte County
Comm'rs, 154 Kan. 222, 231-232, 117
P. 2d 591 (1941)

It is immaterial that the Sheriff's warrant was not issued until after the Court order delivering repossession of the property to the bank, so long as the Sheriff's warrant was issued within three years from the time the taxes became originally due and payable.

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The rule, excepting sales "in the ordinary course of retail trade", presumably would not apply to the bank.

In our opinion the bank is liable for the taxes, owed by its borrower, upon the specific personal property pledged as collateral and which the bank repossessed. However, since this is strictly an "in rem" tax collection procedure, there would be no basis to charge the bank with personal property taxes owed by the borrower on other personal property not involved in the bank transaction. The Sheriff must seek out such personal property, wherever it may be, whether in the hands of the borrower or his transferees, and he must do this before the property is sold at retail and within the three year limitation.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:CJM:dh