



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 62

Joel R. Kriss  
Colby City Attorney  
P.O. Box 509  
Colby, Kansas 67701

Re: Taxation--Judicial Foreclosure and Sale of Real  
Estate by County--Purchase by City of Property  
Offered for Sale Under K.S.A. 79-2804;  
Apportionment of Proceeds of Sale

Synopsis: Under the provisions of K.S.A. 79-2804i, if a city (to whom special assessments are owed) is the successful bidder at a foreclosure sale, it shall be required to pay the delinquent real estate taxes plus the costs and expenses of sale, but shall not be required to pay any delinquent special assessments which are a result of improvements made or work done by or on behalf of the city or any interest and penalties on said delinquent special assessments. A portion of said payment will be returned to the city under the provisions of K.S.A. 79-2805, which prescribes that the proceeds of the foreclosure sale are to be prorated to each fund, if practicable, based upon its proportionate interest in the entire lien for taxes and interest included in the foreclosure action. Cited herein: K.S.A. 79-2804i; 79-2805; 1976 Senate Bill No. 386.

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Dear Mr. Kriss:

You request our interpretation of K.S.A. 79-2804i and K.S.A. 79-2805. Specifically, you pose the following questions:

"1. If a city is the successful bidder on a parcel of real estate at a tax foreclosure sale, does it have to pay an amount equal to the back taxes, plus interest thereon, into court to be distributed pursuant to the court's order?"

"2. How are the proceeds from a tax foreclosure sale apportioned between the county for its claim based on back taxes and the city for its claim based on unpaid special assessments?"

K.S.A. 79-2804i authorizes a city to purchase property offered for sale under K.S.A. 79-2804, and provides as follows:

"Cities are hereby granted the authority to buy real estate offered for sale pursuant to K.S.A. 79-2804 if special assessments have been levied by the city on such real estate and remain due and unpaid at the time of such sale. Such authority shall be exercised by a representative of the city, as authorized and directed by the governing body thereof, who may bid at such sale an amount equal to any other bid received not to exceed the amount of the judgment lien, including the unpaid special assessments levied by the city, and interest thereon as provided by law plus the cost, charges and expenses of the proceedings and sale as set forth in the execution of order of sale. If the city is the successful bidder, it shall be required to pay the delinquent real estate taxes plus the costs and expenses of sale, but shall not be required to pay any delinquent special assessments which are a result of improvements made or work done by or on behalf of the city or any interest and penalties on said delinquent special assessments."

The above-quoted statute was enacted in 1976 as a part of Senate Bill No. 386. Legislative history indicates that the

bill was enacted to provide a means for a city to protect its investment in a piece of real estate, and that, under the statute, the city would be considered the successful bidder if its bid equals the highest other bid. [Supplemental Information on Senate Bill No. 386 (as amended by Senate Committee on Judiciary).]

K.S.A. 79-2805 provides for apportionment of the proceeds of sale in a foreclosure action:

"The proceedings so authorized by this act in the name of the board of county commissioners of the county shall be for the benefit of the state of Kansas, any city, township, school district or other taxing unit interested in such taxes to be recovered. The balance equitably apportioned to each tract, lot or piece of real estate as provided in K.S.A. 79-2803, and amendments thereto, shall be paid by the clerk of the district court to the county treasurer, who shall prorate to each fund, if practicable, its proportionate interest in the entire lien for taxes and interest included in the foreclosure action. If the court shall find such proration impracticable, distribution shall be made among the various funds in such proportion as the court shall direct. If the proceeds of the sale of any particular tract, lot or piece of real estate sold by the board of county commissioners after the county has bid the same in at the tax foreclosure sale shall not equal or shall exceed the amounts necessary to pay the entire lien for taxes, interest and costs which were included in the foreclosure action plus any and all subsequent taxes and special assessments and interest on said real estate due and unpaid at the time of such sale, the amount collected shall be apportioned as follows:

"(a) First in the payment of the advertising, commission and other costs incident to the sale;

"(b) the balance prorated, if practicable to each fund, in proportion to its interest in the entire lien for taxes and interest which were included in the foreclosure action.

"If such proration is impracticable such balance shall be prorated to each fund on the basis of the levy made for the year in which such sale is made by the county. Prorations and distributions shall be made only as and when the county receives said funds upon final sale, unless said county decides to use said real estate for county purposes; in that event it shall cause all taxes other than taxes levied by the county to be paid forthwith to the taxing unit that levied the same. The county treasurer at the time of making his or her proration and distribution shall cancel all taxes charged against such real estate which were due and unpaid at the time such sale or resale was made and shall issue his or her receipt therefor."

Under the above-quoted statute, regardless of whether or not a city is the successful bidder at a foreclosure sale, a city is entitled to its proportionate interest in the proceeds of sale. The city's interest in the proceeds would be the proportion which its taxes and specials bear to the entire judgment lien.

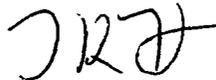
In summary, and responding to your specific questions, under the provisions of K.S.A. 79-2804i, if a city (to whom special assessments are owed) is the successful bidder at a foreclosure sale, it shall be required to pay the delinquent real estate taxes plus the costs and expenses of sale, but shall not be required to pay any delinquent special assessments which are a result of improvements made or work done by or on behalf of the city or any interest or penalties on said delinquent special assessments. A portion of said payment will be returned to the city under the provisions of K.S.A. 79-2805, which prescribes that the proceeds of the foreclosure sale are to be prorated to each fund, if

practicable, based upon its proportionate interest in the entire lien for taxes and interest included in the foreclosure action.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JLM:TRH:jm