

Opinion No. 78-08

May 22, 1978

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PROPERTY TAX LIENS; TAX LIEN ENFORCEMENT

When the state acquires real property upon which a property tax lien exists, the lien is generally extinguished. New Mexico Constitution, Article VIII, Section 3 provides an exception to this rule. Tax liens are not revived upon sale to a purchaser by the state.

QUESTIONS

1. Will property tax liens survive and be enforceable against property, title to which has been acquired by the state?
2. Will property tax liens on property acquired by the state be enforceable against subsequent purchasers from the state?

CONCLUSIONS

See Analysis.

ANALYSIS

This opinion is concerned only with real property acquired by the state through gift, devise, trade, purchase or condemnation. Property held by the state as the result of valid tax enforcement proceedings is not involved.

OPINION

Two New Mexico cases have clearly established that property acquired by the state is immediately relieved of the burden of any outstanding tax liens. **Schmitz v. New Mexico State Tax Commission, et al.**, 55 N.M. 320, 232 P.2d 986 (1951); **State v. Locke**, 29 N.M. 148, 219 P. 790 (1923). The rule in a substantial, if not a majority, of jurisdictions is to the same effect -- unless otherwise provided by law, tax liens existing at the time of acquisition of property by a state are extinguished or merged into the state's title. See Annotation, 158 A.L.R. 563. The Court in **Locke** gives a cogent rationale for this rule. 29 N.M. at 155-6.

However, Article VIII, § 3, N.M. Const. creates an exception to the New Mexico rule:

"Provided, however, that any property acquired by public libraries, community ditches and all laterals thereof, property acquired and used for educational or charitable purposes, and property acquired by cemeteries not used or held for private, or corporate profit, and property acquired by the Indian service, and **property acquired by the United States government or by the state of New Mexico by outright purchase or trade, where such property was, prior to such transfer, subject to the lien of any tax or assessment for principal or interest of any bonded indebtedness shall not be exempt from such lien, nor from the payment of such taxes or assessments.** " (Emphasis added.)

The effect of this proviso is to maintain the lien on property acquired by "outright purchase or trade" if the tax or other assessment secures a bonded indebtedness. No other tax lien, therefore, survives when property is acquired by the state. Further, unless the property is acquired in the manner specified in the proviso, liens for taxes and assessments for bonded indebtedness would also be extinguished.

We now consider the matter of enforcement of tax liens to which the constitutional exception does not apply. Clearly, if the lien against the property is extinguished, the right to enforce it against the property is similarly extinguished. The property involved cannot be sold for taxes; any proceedings to enforce collection -- **other than a personal action against the former owner**, as under Section 72-31-47, N.M.S.A. 1953 Comp. -- are invalid. Consequently, the sale of such state property for taxes would be void. **State v. Locke**, 29 N.M. at 160.

In short, once the state takes title to real property -- other than as provided in Article VIII, § 3 -- all existing tax liens against the property are extinguished, and the authority to enforce collection by sale of the property ceases.

In the absence of an agreement to insure payment of outstanding taxes between agencies which acquire property and taxing authorities, the state will often lose tax revenues by being unable to enforce tax liens. This will occur where the acquisition does not involve judicial proceedings as in the case of gifts, negotiated purchase or trade, for example.

Judicial proceedings in eminent domain, however, furnish the taxing authority, as a party to the action, the opportunity to recover delinquent taxes. It is generally held that where the state takes property by eminent domain, liens for taxes shift from the land to the award. See Annotation, 45 A.L.R.2d 522; 2 Nichols on Eminent Domain § 5.744.

Section 72-31-16, N.M.S.A. 1953 Comp., specifically deals with the property tax status of real property subject to condemnation. This section, however, directly concerns only current taxes. Nonetheless, the statute fixes, by inference, the point at which property tax enforcement proceedings involving the land itself are no longer valid. Thus, when either event specified in subsection A of Section 72-31-16 occurs, the landowner

becomes the condemning authority. From that time, the land is free of outstanding liens for past taxes.

Since real property taxes are an automatic lien against real property as of January 1 of each year -- both under current and prior law -- the condemnor is on notice of the lien, and the Property Tax Department or county authorities ought to be joined in condemnation proceedings. This ought to be the case regardless of whether the taxing authority is an indispensable party in such proceedings.

At the same time, failure to participate in a condemnation proceeding creates the risk that outstanding taxes will not be recovered. Taxes cannot be collected from the state where it is the condemnor nor, for that matter, from political subdivisions of the state. Moreover, as we have said, the lien is extinguished as against the property. The taxing authority's remedy, therefore, is through a personal action -- where authorized by statute -- against the former owner who owed the taxes.

The liens for taxes and assessments considered in Article VIII, § 3, N.M. Const. can be enforced in condemnation proceedings as well. However, failure of the proper authority to do so **does not** impair these liens. Such liens are not extinguished except by payment. They follow the land into the hands of the condemnor/agency and any subsequent purchaser from that agency. In these instances, the state agency is responsible for seeing that such taxes or assessments are paid.

From what we have said, it is apparent that property acquired by the state -- aside from the constitutional exception discussed -- is free of any outstanding tax liens. The Court in **State v. Locke**, 29 N.M. at 159 concluded that the tax lien merges into the title of the fee owner -- in this case, the state. Therefore, these liens, absent a statute to the contrary, are not revived upon sale of the property by the public agency. The state's purchaser takes the property free and clear of prior tax liens.

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