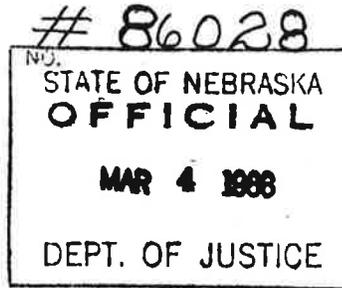


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: March 3, 1986

SUBJECT: Foreclosure of Tax Certificates

REQUESTED BY: Gary C. Anderberg  
Adams County Attorney

WRITTEN BY: Robert M. Spire, Attorney General  
John Boehm, Assistant Attorney General

This is in response to your letter of January 23, 1986, in which you request an opinion concerning the foreclosure of a tax certificate held by the county. Your initial question is whether the county, which is the holder of a tax certificate, can commence a foreclosure action after the three year period of redemption has passed, where the property holder of said real estate has paid the face amount of said certificate if there are other subsequent taxes still due and owing on said property. Your hypothetical more specifically sets forth the situation as follows: A tax certificate was issued on November 1, 1982, with the redemption period expiring November 1, 1985. Said certificate includes on the face amount delinquent years 1979 and 1980. In December 1984, the property holder pays all of the delinquent taxes for 1979 and 1980 along with the interest accrued, however, he does not pay the 1981, 1982 and 1983 taxes which are also delinquent and owing. Thus the question remains whether the county can commence a foreclosure action on the 1982 tax certificate even though the face amount of the certificate has been paid.

Neb.Rev.Stat. §77-1809 (Reissue 1981) provides that the county may purchase property offered for sale when it remains unsold for want of bidders, and the county in turn is to be issued a tax certificate. Neb.Rev.Stat. §77-1824 (Reissue 1981) provides that the owner of the land sold for taxes may redeem the same at any time before the delivery of a tax deed by paying the sum mentioned in the certificate together with interest, and "together with all other taxes subsequently paid, whether for any year or years previous or subsequent to said sale, and interest thereon at the same rate from date of such payment to date of redemption." Obviously, the county has not paid the subsequent

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Mr. Gary C. Anderberg  
March 3, 1986  
Page -2-

taxes to itself for this property, and one could argue that in such a case all that is necessary for redemption is to pay the face amount of the certificate.

This argument, however, would appear to be inconsistent with the court's previous interpretations of the nature of the tax certificate and subsequent taxes. In the case of County of Madison v. Walz, 144 Neb. 677 at 681, 14 N.W.2d 319 (1944), the court said "This court has heretofore held in a case similar to the one at bar in many respects, that the foreclosure of a valid tax sale certificate, together with prior and subsequent taxes paid, constitutes a single cause of action. (Omission of citations)."

The court went on to note under the statutory law then in effect, which does not appear to be that dissimilar to the present statutory scheme, that:

[T]he purchaser of the tax sale certificate "acquires a perpetual lien of the tax on the land, and if, after the taxes become delinquent he subsequently pays any taxes levied on the same, whether levied for any year or years previous or subsequent to such sale, he shall have the same lien for them, and may add them to the amount paid by him in the purchase." A county purchasing and foreclosing a tax sale certificate on real estate does so as trustee of an express trust for the use and benefit of the state and all other governmental subdivisions entitled to participate in the distribution of the proceeds. The trust property or trust res under these circumstances is the tax sale certificate with the rights evidenced thereby. Prior and subsequent taxes become merged in and a part of the certificate. (Omission of Citation)

Contentions of defendant that the record does not show that the county ever paid the taxes or issued a receipt therefor, and that it must do so to give these proceedings validity, have no merit. It was unnecessary since the law will not require a useless procedure. . . . As early as County of Lancaster v. Trimble, 34 Neb. 752, 52 N.W. 711, a case similar to the one at bar in most respects, defendant demurred to the county's petition upon three grounds. The third was, "Because it does not appear that the plaintiff, the county of Lancaster, has paid any portion of said tax." The demurrer was overruled and this pertinent statement appears in the opinion: "The money being due the county, either in its own or a representative capacity, it is unnecessary for it to pay the amount of

the tax to the treasurer, and the taxes in question, so far as appears, are valid liens upon the land in controversy. This disposes of the . . . ground of demurrer." (Omission of Citation) A fortiori, it being unnecessary to pay the taxes it would be unnecessary for the county treasurer to issue receipts to the county for the taxes represented by the certificate and certified thereon by endorsement of the county treasurer as in the case at bar. To defeat the enforcement of valid liens for taxes there must be something more appearing than mere technical errors or omissions which do not affect the substantial rights of the parties. . . .

Id. at 681-83.

Thus, it appears that the courts have viewed the liens for subsequent taxes to become merged with the tax sales certificate, and the mere payment of the face amount of the certificate, would be inadequate to redeem the property where the county is the holder of the certificate, merely because the county has not paid these taxes to itself. This position would also appear to be consistent with the foreclosure statutes themselves. In this regard Neb.Rev.Stat. §77-1902 (Reissue 1981) provides that:

Where land has been sold for delinquent taxes and a tax sale certificate or tax deed has been issued, the holder of such tax sale certificate or tax deed may, instead of demanding a deed or, if a deed shall have been issued, by surrendering the same in court, proceed in the district court of the county in which the land is situated to foreclose the lien for taxes represented by the tax sale certificate or tax deed, and all subsequent tax liens thereon, in the same manner and with like effect as in the foreclosure of a real estate mortgage, . . . . (Emphasis added)

Of course, Neb.Rev.Stat. 77-1901 (Reissue 1981) provides that the county shall have a lien upon the real estate for all taxes due thereon. Furthermore, Neb.Rev.Stat. §77-1913 (Supp. 1984) provides that:

The court shall, after the expiration of the time provided in section 77-1903 and on the motion of the plaintiff, examine the proceedings and, if they are found to be correct and if the subsequent taxes have been paid to date, in case the purchaser is not a land reutilization authority or a governmental subdivision of the state, a municipal corporation or an irrigation or drainage district interested in the distribution of

Mr. Gary C. Anderberg  
March 3, 1986  
Page -4-

the proceeds of the foreclosure sale, make and enter an order of confirmation of the sale, shall direct the disposition of the proceeds of the sale and order the sheriff to make and deliver to the purchasers, without further cost to them, a sheriff's deed for any real estate not redeemed; . . . .

This statute obviously presumes that the subsequent taxes will not have been paid where the county is the holder of the tax certificate in a foreclosure proceeding. Thus, we believe that under the circumstances you have indicated in your hypothetical, a county may properly commence a foreclosure action for delinquent subsequent taxes on real estate for which it holds a tax sales certificate, even though the property owner has paid the face amount of said certificate.

In addition you also ask whether a county treasurer can issue more than one tax sale certificate for the same parcel of property, so long as the certificates are issued for different delinquent tax years. This question was answered in the affirmative by our office in a previous opinion No. 250 dated March 5, 1980, copy enclosed. We believe this opinion to be correct, and would further note that Neb.Rev.Stat. §77-1904 (Reissue 1981) clearly anticipates the existence of more than one tax certificate on a particular piece of property, in that it provides that "In all foreclosure proceedings, the plaintiff may include in one petition as many tax sale certificates, tax deeds or tax liens as the plaintiff may hold, regardless of whether they are upon the same or different tracts of real estate and whether the land covered by them is owned by the same or different persons."

Sincerely,

ROBERT M. SPIRE  
Attorney General

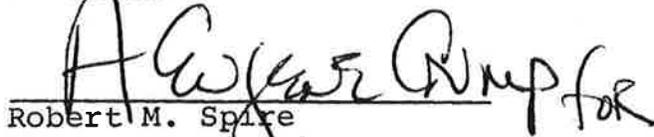


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JB/bae

Encl.

APPROVED:



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