

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

November 9, 2018

Katherine Barrett Riley, Esquire
Holmes County Board of Supervisors
Post Office Box 927
Lexington, Mississippi 39095

Re: Voiding a Tax Sale on Sixteenth Section Land

Dear Mrs. Riley:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Facts

In your letter, you explain that a school district entered into a lease with Farmer A for a term which ended in 2014. The school district then entered into a new lease for the same tract of land with Farmer B for the year 2015. The County, however, failed to assess the taxes to Farmer B in 2015. The taxes remained in the name of Farmer A, and Farmer B never received notice of the sale of the lease in August 2016. The remaining time on the lease to Farmer B was sold at the tax sale in August 2016, and now the sale has matured. The school district cancelled the contract with Farmer B for non-payment of the lease. You also explain that the buyer who paid the taxes at the 2016 tax sale now wants a refund. The buyer did not realize that he was paying taxes on a 16th section lease rather than land.

Questions Presented

1. Is the County required to void the sale to the buyer because the assessment was not in the correct name of Farmer B?
2. Is the County required to issue a full refund?
3. If so, who would be responsible for the 2015 taxes since the lease with Farmer B has been cancelled and Farmer B has no current interest in the land or lease?

Legal Response and Analysis

In your first question, you inquire as to whether the county board of supervisors is required to void a tax sale where the taxes were incorrectly assessed in the name of the previous lessor of sixteenth section land. With regard to voiding tax sales, this office has opined that such sales may be voided for circumstances including those where notice of the sale was improper, the sale was due to a double assessment of the property or when the property was not liable for taxes in the first instance. See MS AG Op., Miller (August 7, 2015)(citing MS AG Op., Jacks (October 14, 2011)(lack of notice)); MS AG Op., Miller (November 16, 2012)(double assessment); MS AG Op., Yancey (July 14, 2000)(property held by the United States and, thus, not taxable). In all of these situations, the tax sales were, in the first instance, improper.

With regard to your factual scenario, it appears as though the taxes may have been improperly assessed to the previous lessor and, thus, the tax collector failed to provide notice of tax sale to the appropriate individual pursuant to Miss. Code Ann. Section 27-43-3. You also explain that the tax sale took place in August of 2016. Thus, the two year redemption period has expired. Our office has previously opined that after the redemption period has run, the tax-purchaser has not only "perfect title" to the leasehold interest but also the right of possession of the leasehold. Although such a purchaser could obtain a tax deed, the purchaser is not required to and his title and rights to possession are intact. MS AG Op., Miller (August 7, 2015). After the redemption period runs, a board of supervisors generally has no jurisdiction to act with regard to the validity or effect of a tax sale. MS AG Op., Sutton (July 21, 2017); MS AG Op., Miller (August 7, 2015). Thus, it is the opinion of this office that the Holmes County Board of Supervisors may not void a tax sale after the redemption period has run. The proper venue and jurisdiction to void a matured tax sale is a court of competent jurisdiction.

In your second question, you ask whether Holmes County is required to refund the tax purchaser. As stated in our response to your first question, after the redemption period has run, whether or not the tax sale is void due to improper assessment to the previous lessor and/or insufficient notice of the tax sale is a mixed question of law and fact that can only be determined by a court of competent jurisdiction. Once the court declares the tax sale void due to improper assessment and/or lack of notice of the tax sale, the court may declare the tax deed also void. The tax sale purchaser would then be entitled to a refund of the purchase price paid at the tax sale, but not payment of interest, except that portion of the purchase price that represented interest due on the taxes prior to the tax sale. Miss. Code Ann. Section 27-73-7. See also MS AG Op., Yancey (July 14, 2000); MS AG Op., Hollimon (February 15, 1995). A purchaser would be entitled to a refund so long as the application for a refund is initiated within the three year statute of limitations set forth in Section 15-1-49. MS AG Op., Miller (November 16, 2012).

In response to your third question, it is important to note that there appears to have been a termination provision contained in the lease between the school district and Farmer B for

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failure to make a payment. However, we do not have a copy of the lease agreement, and, thus, we cannot state what the legal effect of the lease agreement is or how the terms affected the previous sale or would affect any subsequent sale. Furthermore, the interpretation of the terms of a lease agreement are beyond the scope of this office's official opinion authority. Additionally, we are unable to answer your question by way of an official opinion as it is dependent upon a factual determination and ruling by a court of competent jurisdiction as to whether the 2015 tax sale is void.

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Avery Mounger Lee
Special Assistant Attorney General

OFFICIAL OPINION