

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

July 5, 1994

SUBJECT: Forfeited Land Commission - Transfer of Forfeited Land by Commissions to County Governing Bodies.

SYLLABI: 1. A forfeited land commission (FLC) is not required to consummate its bid on forfeited property by paying for the property at the time of the bid since the statutory scheme governing satisfaction of tax liabilities requires payment by the FLC only when the forfeited property is sold by either the FLC or the former owner of the property.

2. Title to property deeded to a FLC rests with that commission and not the county governing body. The FLC may sell property to a county governing body if it appears that the sale is in the best interest of both the county and the other governmental entities which have a tax interest in the property. The purchase price for such property must be paid to the FLC which remits the funds to the county treasurer who disburses it by dividing it among the interested entities in proportion to their "respective interests" under S.C. Code Ann. Sections 12-59-100 (1976) and 12-51-80 (Supp. 1993).

TO: Mr. Michael L. Horton
Assistant Comptroller General

FROM: Jeffrey M. Nelson *JMN*
Assistant Attorney General

QUESTIONS:

1. Must a FLC pay the county treasurer when the FLC is the "successful bidder" at a tax sale?

2. If the FLC acquires title to property and the governing body of that county wishes to acquire ownership and permanent use of the property, must the commission deed the

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property to the county or is the title held by the commission equivalent to county ownership?

APPLICABLE LAW: S.C. Code Ann. Sections 12-59-10, et seq. (Supp. 1993) and 12-49-510 (1976, repealed by 1985 Act No. 166, Section 17, eff. January 1, 1986).

DISCUSSION Question 1:

Forfeited land commissions are entities created in each of the several counties of the State as mandated by state law (Section 12-59-10). Property successfully "bid" on by a FLC must be deeded to the FLC, not the county or the governing body of the county (S.C. Code Ann. Section 12-59-40 (1976)). The first question presented is whether the FLC must consummate its bid by paying for the property which is the subject of the bid.

The principal duty of the FLC is to sell property it acquires. Section 12-59-40 states that FLCs shall "effect the sale of lands forfeited" Additionally, former owners may also sell the property pursuant to S.C. Code Ann. Section 12-59-50 (1976). For sales made under Section 12-59-50, S.C. Code Ann. Section 12-59-60 (1976) provides that such sales may be authorized by the FLC when the former owner pays the taxes due on the property. When the taxes are paid by the former owner, then the county and political subdivisions are entitled to their pro-rata share of the taxes paid. It is implicit in these statutes that the tax liability on the forfeited property is not paid when the property is "purchased" on behalf of the FLC.

Such is further supported by additional language in Section 12-59-60 which states ". . . upon such payment the commission shall release the lien for taxes" Obviously, if the FLC had already satisfied the taxes by payment of the bid, there would be no lien to release.

Additionally, Section 12-59-100 provides that the proceeds of sales by the FLCs shall be turned over to the county treasurer for disbursement to the various entities for which taxes on the property were levied. Thus, Section 12-59-100 also implies there is no disbursement of funds until a sale is made by the FLC. Accordingly, it is not the intent of the Legislature to require a FLC to pay the county treasurer at the time the property is bid in by a FLC.

CONCLUSION Question 1:

A forfeited land commission (FLC) is not required to

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consummate its bid on forfeited property by paying for the property at the time of the bid since the statutory scheme governing satisfaction of tax liabilities requires payment by the FLC only when the forfeited property is sold by either the FLC or the former owner of the property.

DISCUSSION Question 2:

In regards to the second question presented, title to land deeded to a FLC is held in the name of that commission and is not held by the governing body of the county. Title in property held by a FLC is not the equivalent of ownership by the county. If a county wishes to acquire ownership of property held by the county FLC, it must purchase it from the FLC in order to obtain title.

While title to forfeited property is held by the FLC, Section 12-59-40 mandates that such property be held by the FLC "as assets of the county and State and sold to the best interest of the county and State." Over the years, the State has lost most of its interest in property taxes, but school districts, special purpose districts and other "political subdivisions" do have such an interest. See Section 12-51-80 which requires distribution ". . . to the respective political subdivisions for which the taxes were levied." Therefore, forfeited property deeded to FLCs should be held by them as assets of the counties and districts which have a tax interest in the property. Such property should be sold on terms and conditions which best satisfy both.

While there is no statutory prohibition on FLCs selling land to county governing bodies, the reasonable and practical construction of the statute, consistent with the statute's purpose of collecting taxes from property which otherwise would not have been collected, is that the land be sold for the best interest of the county and other entities which have a tax interest in the land. A FLC may not transfer title of any property to the county governing body, or any other public body or individual, unless such sale or transfer benefits both the county and the other interested entities. A sale or transfer which benefits the county at the expense of interested districts would violate a duty which the FLCs owe such districts.

Therefore, if a county governing body purchases land from the county FLC after the FLC determines that such a sale would be in the best interest of the county and other interested entities, it must pay the county treasurer the pur-

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chase price. The proceeds of such a sale are disposed of by the county treasurer under Sections 12-59-100 and 12-51-80. Likewise, if under the provisions of Section 12-51-80 a FLC assigns its bids to forfeited land to the county governing body, that body must pay the minimum statutory consideration for such an assignment.

CONCLUSION Question 2:

Title to property deeded to a FLC rests with that commission and not the county governing body. The FLC may sell property to a county governing body if it appears that the sale is in the best interest of both the county and the other governmental entities which have a tax interest in the property. The purchase price for such property must be paid to the FLC which remits the funds to the county treasurer who disburses it by dividing it among the interested entities in proportion to their "respective interests" under S.C. Code Ann. Sections 12-59-100 (1976) and 12-51-80 (Supp. 1993).

JMN:wcg