

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

March 25, 1991

SUBJECT: Taxation & Revenue - Notice To Be Given
On Sale Of Mobile Home For Non-Payment
Of Taxes.

SYLLABI: 1. The notice required by Section 12-49-225
to lienholders concerning the sale of a
mobile home for non-payment of taxes is
mandatory.

2. A failure to comply with the provisions
of Section 12-49-225 by giving notice to
those persons entitled thereto would preclude
the issuance of a valid tax deed.

TO: Mr. Michael L. Horton
Assistant Comptroller General

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTIONS:

1. Is the notice provided by Section 12-49-225 no longer required because of the provisions of Section 12-51-95, et seq.?
2. Does the failure to give notice invalidate the sale of a mobile home?

APPLICABLE LAW: S.C. Code Ann. Sections 12-49-225 (Supp. 1990) and 12-51-95 (Supp. 1990), et seq.

DISCUSSION:

Question 1. Section 12-49-225 provides in part that:

Whenever any mobile home or modular home is levied upon for taxes by the sheriff, [tax collector] he shall give before proceeding to advertise for sale twenty days written notice of the levy to the lienholders contained on the certificate of title held by the South Carolina Highways and Public Transportation Department. . . .

March 25, 1991

The fact that the General Assembly subsequently enacted Section 12-51-95, et seq., does not in any way negate the above requirements. The section provides:

Notwithstanding the provisions of Section 12-51-110, the owner of any "mobile home" or "modular home", as defined in Section 31-17-20, may redeem the property as provided for in Sections 12-51-90, 12-51-100, and 12-51-120.

There is no conflict between the two statutes. Section 12-49-225 provides for a notice to lienholders and Section 12-51-95 provides for the right to redeem the property. The intent of the General Assembly is clear and controlling and the two statutes must be followed. For cases, see 17 S.C.D., Statutes, Key 181, et seq.

CONCLUSION:

Question 1: The notice required by Section 12-49-225 to lienholders concerning the sale of a mobile home for non-payment of taxes is mandatory.

DISCUSSION:

Question 2: The Court of Appeals in the case of Good v. Kennedy, 291 S.C. 204, 352 S.E. 2d 708 (1987), held as follows:

. . . Although we can locate no South Carolina case dealing with the point raised in this appeal, the general law is that where a statute requires as a condition precedent to foreclosing a taxpayer's rights in property sold for taxes that he be given notice of his right to redeem, such a requirement is "generally regarded as jurisdictional, and therefore, the owner's right of redemption cannot be cut off unless the required notice is given." 72 Am.Jur.2d, State and Local Taxation, Section 1010 (1974); accord, 85 C.J.S., Taxation, Section 859 (1954).

Under the holding in that case, the notice must be given, otherwise, the rights of the lienholder are unaffected.

Mr. Michael L. Horton
Page Three

March 25, 1991

In the case of Snelgrove v. Lanham, 298 S.C. 302, 379 S.E.2d 904 (1987), the Supreme Court set aside a tax deed because proper notice of the tax liability was not given the owner of the property. It is thus apparent that the required notice is a condition precedent to a valid sale.

CONCLUSION:

A failure to comply with the provisions of Section 12-49-225 by giving notice to those persons entitled thereto would preclude the issuance of a valid tax deed.

JLAJR/jws