1975 S.C. Op. Atty. Gen. 178 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4099, 1975 WL 22395

Office of the Attorney General

State of South Carolina
Opinion No. 4099
August 28, 1975

***1 (1) Title to marshlands is presumed to be in the State.**

(2) Payment of taxes on marshlands, the title to which is in the State, constitutes a voluntary payment with no attendant rights.

(3) Marshlands may be fresh, brackish, or salt water.

(4) The boundary to a marshland is the high water mark.

Jasper County Tax Assessor

It is first necessary to establish, for purposes of this opinion, the definition of marshland. It was stated in the case of *Cape Romain Land & Improvement Co. v. George-Carolina Canning Co.*, 148 S. C. 428, 146 S. E. 434, that:
'While a marsh is land usually wet and soft and commonly covered wholly or partly with water and is often referred to as a swamp, it is also known as a meadow which remains green during dry seasons.'

For purposes of this opinion, we therefore limit the term to that area between the high-water mark and the low-water mark on a tidal navigable stream. Title to such lands is presumed to be in the State. *State v. Yelsen Land Co.*, 257 S. C. 401, 185 S. E. 2d 897; *State v. Hardee*, Opinion 20060, July 14, 1975; *State v. Pinckney*, 22 S. C. 484.
'The title to land below highwater mark on tidal navigable streams, under well-settled rule, is in the state not for purpose of sale, but to be held in trust for public purpose.' *Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.*, supra; *State v. Hardee*, supra.

As stated, the ownership of marshland is presumed to be in the State and any person claiming otherwise bears the burden of proof of the grant of title to such lands. *State v. Yelsen Land Co.*, supra. In this connection, it should be noted that any deed or grant purporting to transfer such title is strictly construed in favor of the State and against the grantee. *State v. Hardee*, supra.

It is the opinion of this office that, in the absence of a deed or grant clearly conveying title to marshland, title thereto rests in the State of South Carolina and the lands would not be subject to taxation. Should such a grant or deed exist, however, the land would be taxed to the owner thereof as defined by Section 65–1611 of our Code.

It is the opinion of this office that the payment of a tax on lands belonging to the State by an individual is a voluntary payment by such person and there are no rights to recover the same.
'* * * payment of taxes by a stranger, a mere volunteer, or an intermeddler, or a mere trespasser, or a person who has no legal interests in the property, or contractual rights with the owner, or who knows, or is charged with knowledge, that he has no title to the land, cannot be made the foundation of any right or claim on the part of such person, unless adopted or ratified by the owner.' 84 C.J.S., *Taxation*, Sec. 610, p. 1223.

It is the opinion of this office that title to all marshlands, whether salt, brackish or fresh, is presumed to be in the State.

It is the opinion of this office that the boundary for marshlands would be the high-water mark. See quotation above from *State v. Hardee*.

***2** It is the opinion of this office that similar treatment is to be given to old ricefields; that is to say, unless clear title to the marshlands reflects otherwise, the same is presumed to be in the State.

Joe L. Allen, Jr.
Assistant Attorney General

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