

SALE OF LANDS SUBJECT TO DELINQUENT TAXES

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA**



17025, 1970

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1970

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SALE OF LANDS SUBJECT TO DELINQUENT TAXES

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

Richmond, Virginia
December 29, 1969

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*
and
THE GENERAL ASSEMBLY OF VIRGINIA

The alternative method, to that of bringing a chancery suit, available to a county or city for effecting the sale of lands upon which real estate taxes have become delinquent is the sale thereof by the local treasurer resulting in the execution and delivery of a deed by the clerk of court to the purchaser, that is, the so-called "clerk's tax deed". Titles derived through such proceedings have always been suspect. Furthermore, such proceedings, to say the least, are very cumbersome. Consequently, the General Assembly at its 1968 Regular Session adopted House Joint Resolution No. 30, directing the Virginia Advisory Legislative Council to make a study of sales of delinquent tax lands. The text of this Resolution follows:

HOUSE JOINT RESOLUTION NO. 30

Directing the Virginia Advisory Legislative Council to make a study of sales of delinquent tax lands.

Whereas, various problems relating to the sale of delinquent tax lands have arisen throughout the State in recent years, and

Whereas, there have been numerous recommendations for changes in the said laws; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to make a study of the laws of this State relating to the sale of lands upon which taxes have become delinquent, together with the prevalent practices and procedures, therefore,

All appropriate agencies shall assist the Council in its study. The Council shall conclude its study and report its findings and recommendations to the Governor and the General Assembly not later than November one, nineteen hundred sixty-nine.

Garnett S. Moore, of Pulaski, a member of the House of Delegates and a member of the Council, was selected as Chairman of the Committee to make the preliminary study and report to the Council. The following persons were chosen to serve as members of the Committee with Mr. Moore: L. A. Clements, Commissioner of the Revenue of Southampton County, Courtland; Edward M. Holland, Attorney at Law, Arlington; W. Tayloe Murphy, Jr., Attorney at Law, Warsaw; Lucas D. Phillips, Attorney at Law, and a member of the House of Delegates, Leesburg; A. L. Philpott, Attorney at Law, and a member of the House of Delegates, Bassett; Donald R. Taylor, Attorney at Law, and Judge of the County Court of James City County and of the Civil Justice and Juvenile and Domestic Relations Courts of the City of Williamsburg; and Edward E. Willey, Jr., Attorney at Law, Richmond.

The Committee met and organized, and elected Mr. Phillips, Vice-Chairman.

The Division of Statutory Research and Drafting, represented by Wildman S. Kincheloe, Jr., served as Secretariat for the Committee.

A public hearing was held by the Committee in the State Capitol Building. Representatives of the Treasurers Association of Virginia, the Virginia Court Clerks Association, and title insurance companies attended the hearing and addressed the Committee. Also addressing the Committee at this hearing was an assistant city attorney for one of the large cities in the State who said he had discussed this problem previously with the officials of several neighboring cities.

With the unanimous approval of the Committee, Judge Taylor made arrangements with the Dean of the Law School of the College of William and Mary for two of the Senior students in that School to conduct research concerning the problems involved in this study and to furnish a brief, including suggestions, to the Committee. Included in this research was an examination of the applicable statutes of Virginia and the comparable statutes of some of the other states. These students also personally discussed these problems with officials of title insurance companies in the city of Richmond. The students spent a considerable amount of time on this project and presented to the Committee a very excellent and exhaustive report.

The Committee met and considered the suggestions made at the public hearing, the report of the students and suggestions made by members of the Committee itself.

The Committee, after completing its deliberations, made its Report to the Council. Having reviewed that Report, the Council now makes its Report.

A locality may bring a chancery suit for the purpose of having lands sold in order to satisfy the lien of unpaid real estate taxes thereon. This proceeding is not involved in the problems which are the subject of this study and will not be discussed in this Report, nor will this Report contain any recommendations concerning that proceeding.

This Report is concerned with the proceedings for selling lands for such purposes as set forth in Articles 2 through 7 of Chapter 21 of Title 58 of the Code of Virginia. These articles consist of §§ 58-1029 through 58-1117.

Briefly, these sections provide that the local treasurer sell delinquent tax lands at public auction. Provisions are made for the purchaser at such sale to take possession of the land. If the land has not been redeemed by the owner within three years from the date of sale, the purchaser may apply to the clerk of court for a deed conveying the land to him. However, he must give notice to the owner and certain other parties of his intention to apply for such deed. If the owner or other person entitled to redeem such land has not done so within four months of the date of such notice, the clerk shall then execute and deliver to the purchaser a deed conveying the land. Any infant, insane person or person imprisoned, whose land has been so sold, may redeem it by paying to the purchaser, within three years after the removal of the disability, the amount paid for the land, all necessary charges incurred by the purchaser in obtaining title and additional taxes which may have been paid by the purchaser, plus interest. Lands not purchased at the treasurer's sale shall be purchased by the treasurer "in the name of the Commonwealth" for the benefit of the locality. Provisions are made for redemption of lands so purchased in the name of and standing vested in the Commonwealth. Any lands so purchased in the name of the Commonwealth and not redeemed by the owner within three years from the date of such "purchase" may then be purchased by any person. Such person shall file an application with the clerk of court, whereupon notice is served on the owner and other parties in interest in the title, with service by publication where requisite. If none of such parties have redeemed the land within four months, the person who made the application may within five days after the expiration of such four months purchase the land by paying all necessary amounts to the clerk. A deed shall then be executed and delivered

by the clerk to such purchaser. Lands "purchased by the Commonwealth" which have not been redeemed within three years from the date of such purchase, may be sold under a proceeding by bill in equity to subject the lands to the tax liens. Provisions are also made for sales of delinquent lands by town treasurers and execution and delivery of deed by the town clerk to the purchaser, and for purchase by the town treasurer for the town of lands not sold at such sale.

The foregoing is, of course, an extremely brief summary. For the myriad of details involved in these proceedings, reference is made to the Code sections above cited.

Titles obtained by tax deeds under these proceedings are universally regarded as very weak titles and as not being marketable. Speakers at the public hearing referred to these proceedings as "cumbersome" and "vicious". A city treasurer said that the treasurer's sale is a "farce". The assistant city attorney who appeared said that he and officials of neighboring cities were in agreement that the only procedure for the sale of delinquent tax lands whereby good title could be obtained is by way of a bill in equity. He further stated that he has never met an attorney at law who has said he would pass title based on a clerk's tax deed until the period of adverse possession has run. In his city there have been no purchasers at treasurers' sales in the last fifteen years. After advertisement of the sale is made, people call and upon finding out what they have to go through to obtain a deed they lose interest. The representative of the Virginia Court Clerks Association said the Association would prefer to have all tax sales handled through an equity suit. It is well known in real estate circles that title insurance companies are extremely fearful of titles obtained through such tax deeds and that they usually will not insure such titles. This was confirmed by the representatives of title insurance companies who appeared at the hearing. Both recommended proceedings by way of bill in equity not based on the device of land having been "sold to the Commonwealth".

Generally speaking, there are two underlying reasons why such tax titles are regarded as being of a disreputable nature. First, authority for these sales is wholly statutory and they may easily be avoided if there were deviations from the statutory procedure. Secondly, the large difference between land values and forced-sale price prompts the courts to invalidate the title upon any proof of procedural defects, no matter how harmless.

The Committee, accordingly, made certain recommendations in its Report to the Council, and included in that Report a draft of legislation to implement those recommendations. Although we are not adopting the Committee's recommendations as a part of the Council's Report, for reasons to be stated hereinafter, we are setting out those recommendations for informational purposes. They are as follows:

1. That Articles 2 through 7 of Chapter 21 of Title 58 be repealed, and that § 58-1027 of Article 1 of such Chapter also be repealed.

2. That a new article be added in such Chapter, providing a new alternative proceeding to the proceeding which always has been available and still would be available to the locality, that is, a chancery suit by the locality to subject the land to the lien of the unpaid taxes. A summary of the recommended alternative proceeding follows: After the expiration of five years from the date of the first delinquency, any citizen, (with the exception of officials prohibited by the Code sections, recommended for repeal, from purchasing), corporation, business association or legal entity may proceed by a bill in equity to subject such delinquent lands to judicial sale to enforce the real estate tax liens. Such suit shall be conducted in accordance with the requirements prescribed for a creditor's bill in equity to subject real estate to the lien of a judgment creditor. The complaint in such suit is to be brought for the use and benefit of the locality in which the land lies. The complainant may purchase the land at the judicial sale. The owner may redeem the land by paying off the taxes, penalties and interest before the suit matures to

a judicial sale, but in such event the court shall assess against such owner costs of the suit accrued to the date of such payment including a reasonable attorney's fee for the complainant's attorney. The proposed legislation includes a "grandfather" clause to the effect that any suit or proceedings instituted under the provisions of §§ 58-1027 and 58-1029 through 58-1117 prior to the effective date of the repeal of those sections may be completed in accordance with such provisions.

There is merit in the proposal to repeal all provisions for sale of delinquent tax lands by administrative personnel of local governmental departments and the "purchasing" of such lands by a local official in the name of the Commonwealth when there is no buyer at such sale. These procedures have not been effective in removing lands from the delinquent tax rolls and placing them back in private ownership and the consequent revenue producing status. Even when any such procedure results in a sale, the title derived therefrom is not accepted into the channels of commerce. The alternative procedure recommended by the Committee, in lieu of those procedures recommended by it for repeal, probably would result in restoring more delinquent tax lands to a revenue producing status, and would produce titles which are good and marketable because they would be the result of regular judicial procedure.

However, due to the two-months Special Session of the General Assembly in 1969 on Constitutional revision, and other factors, there was not sufficient time for the Committee, after arriving at its recommendations and preparing the enabling legislation, to ascertain the reaction of interested persons and organizations to those recommendations. Any legislation proposing a considerable departure from the long-standing laws for sale of delinquent tax lands should, preferably, be regarded with approval by members of the bar, local officials, persons engaged in real estate business, and title insurance companies.

RECOMMENDATION

Therefore, we present this Report as being in the nature of a progress report and we recommend a continuation of this Study.

CONCLUSION

We express our appreciation for the assistance given the Committee by the William and Mary Law School students.

To the members of the Committee we extend our appreciation and commendation for the time and effort which they gave to the study of these problems and for the corrective measures which they have suggested.

Before concluding, we wish to mention the following matter. It was suggested to the Committee that recommendation be made for relief of a person, not the record owner, who has occupied land for many years and paid the taxes thereon, by providing that after such occupancy and tax payment for a prescribed number of years, such occupant be permitted to petition the court that title be confirmed in him of record. However, the Committee was of the opinion that such situation, although worthy of consideration, is not a part of the problem of the sale of delinquent tax lands and so made no recommendation with respect to this situation. We concur in this opinion.

A joint resolution to carry out the recommendation in this Report is attached.

Respectfully submitted,

C. W. CLEATON, *Chairman*

J. C. HUTCHESON, *Vice-Chairman*

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HOUSE JOINT RESOLUTION NO.....

Directing the Virginia Advisory Legislative Council to continue its study of sales of delinquent tax lands.

Whereas, the Virginia Advisory Legislative Council made a study and report on the laws relating to sales of delinquent tax lands; and

Whereas, there was not sufficient time to determine the response of interested groups and officials to the Council's tentative recommendations for changes in such laws, and the Council, therefore, included such recommendations in its report for informational purposes and did not recommend legislation for any such changes; now, therefore, be it

Resolved by the House of Delegates, the Senate of Virginia concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of the laws relating to sales of delinquent tax lands and to recommend changes in such laws. The Council shall conclude its study and make its report, including a draft of legislation to implement such changes, to the Governor and General Assembly not later than November one, nineteen hundred seventy-one.

