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B-28443 December 9, 1943

Number: B-28443

Date: 1943-12-09

B-28443 December 9, 1943

The Honorable, The Secretary of Agriculture.

My dear Mr. Secretary:

I have your letter of December 2, 1943, as follows:

"Reference is made to your letter of December 17, 1942 (B028443), addressed to the Treasurer of Ramsey County, Devile Lake, North Dakota, relative to whether the Farm Credit Administration may pay a tax lien on an elevator which it sold to H.L. Conaway on July 3, 1941."

"In your letter of December 17, 1942, the opinion is expressed that the taxes in question had not become a lien against the elevator at the time the United States acquired title thereto and that, therefore, the tax lien is ineffective against the United States."

"In view of your decision that matter was referred on July 15, 1943, to the Department of Justice for appropriate action; and it was then referred to the proper United States Attorney. On July 30, 1943, the United States Attorney reported to the Department of Justice 'that the Government's application for relief and abatement of the taxes for the year 1940 has been denied by the Board of County Commissioners of Ramsey County, North Dakota at their meeting held on July 26th.' In his letter to the Department of Justice the United States Attorney further stated:

"It is to be borne in mind that under the laws of this states the assessment is to be made on April 1st of each year, and it appears from at least one decision, and the only one I am able to find, that the moment the personal property is assessed the county is entitled to that tax for that current year. Gaar, Scott & Company v. Sorum, 11 North Dakota, page 165."

On November 16, 1943, the Department of Justice wrote us as follows:

"Under section 2166 of the Complied Laws of North Dakota, 1913, as amended and reenacted in 1925, all personal property taxes are a lien upon the property from and after the date of the assessment.

In Gaar, Scott & Company v. Sorum, 11 No. Dak. 165, the case cited in the United States Attorney's report, it was held that the date of assessment rather than of levy is determinative of the county's right of taxes.

"Since the matter would appear to be one entirely of local law, the Department believes that any effort to procure a judicial disposition of the matter would result in a finding that the lien was effective on the date of acquisition of the property by the Untied States and that such acquisition was subject to the lien. Compare United States v. Alabama, 313 U.S. 274."

"Accordingly, the Department has instructed the United States Attorney to withdraw the suit instituted by him."

"The State's attorney for Ramsey County is now threatening to levy upon the elevator and sell it for the 1940 taxes."

"Under the circumstances permission is respectfully requested to permit the farm Credit Administration to pay the tax lien covering the 1940 taxes."

"In view of the urgency of this matter prompt action will be appreciated."

In view of the matters set forth in the above quoted Letter -- it particularly appearing that the Department of Justice has determined that it will not litigate the question of the validity of the alleged lien of the Treasurer of Ramsey County, North Dakota, for personal property taxes for the year 1940 on the grain elevator here involved -- you are advised that if it be determined administratively that it will be to the best interests of the United States to clear the title to said elevator by discharging the alleged tax lien, this office will not be required to subject to the payment by the Farm Credit Administration of such amount as is required by State Law to effect such discharge. See 19 Comp. Gen. 768.

Respectfully,

(Signed) Lindsey C. Warren Comptroller General of the United States