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B-40548 January 26, 1944

Number: B-40548

Date: 1944-01-26

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Jar Food Administrator, Jar Food Administration.

My dear Judge Jones:

Consideration has been given your letter of December 27, 1944, as follows:

"We are submitting for your consideration a problem that has emerged in connection with the liquidation of the resettlement projects of the Farm Security Administration.

"Pursuant to the item entitled 'Loans, Grants, and Rural Rehabilitation' in the Department of Agriculture Appropriation Act, 1945 (58 Stat. 679), which appropriates funds for the 'liquidation as expeditiously as possible of Federal rural rehabilitation projects under the supervision of the Jar Food Administration," the JFA has been carrying out an intensive policy of liquidating all such resettlement projects under its jurisdiction.

"at the time the government acquired title to certain of the resettlement project lands in question, tax assessments became valid liens against the land pursuant to the principle subsequently enunciated in the decision of the Supreme Court of the United States in the case of United States v. Alabama, 313 U.S. 274. While such liens remian unenforceable as long as the Government continues to hold title to the lands, three liens, in most cases, become enforceable as soon as the property is conveyed to private individuals. Accordingly, unless the taxes are paid and the liens removed, the purchaser does not receive a clear title to the land. In addition, where any of such land is sold on credit, the Government does not receive a first lien on the land and its security position is thereby jeopardized pro tanto unless the purchaser is in a financial position to pay andend taxes and in fact does so.

"Accordingly, we would appreciate your opinion as to whether payment, in order to remove these valid liens, may be considered a proper expenditure in liquidation of the projects and may be paid from funds appropriated for such liquidation purposes.

"In a decision from Comptroller General McCarl to the Governor of Farm Credit Administration, dated September 9, 1935, (15 Comp. Gen. 199), it was states:

"'Payment of all taxes, including interest and penalties accrued, legally levied and assessed against the property prior to acquisition of title by the United States is authorized from the administrative expense fund. . .'

"Since it was the opinion of the Supreme Court (United States v. Alabama, supra), that the levy and assessment of taxes against the property in question related back prior to the passing of title to the United states so as to constitute a prior tax lien, it would appera that such terms would also constitute 'terms legally levied and assessed against the property prior to acquisition of title by the United States. . .'

"The Department of Agriculture Appropriation Act, 1945, supra, contains the following provision:

"'None of the moneys appropriated or otherwise authorized under this caption "loans, grants, and rural rehabilitation", shall be used for (1) the purchase or leasing of land or for the carrying on of any land purchase or land-leasing program; (2) the carrying on of any operations in collective farming, or cooperative farming, or the organization, promotion or management of homestead associations, land-leasing associations, land- purchasing associations, or cooperative land purchasing for colonies of rehabilitants or tenant purchasers, except fro the liquidation as expeditiously as possible of may such projects heretofore initiated: or (3) the making of loans to any individual farmer in excess of $2,500; or (4) the making of loans to any cooperative association; or (5) the making of loans for the payment of dues to or the purchase of any share or stock interest in any cooperative association (except for medical, dental, or hospital services) or for any expenditur4 other than that deemed necessary in the discretion of the Administrator, for the production of agricultural commodities." (Underscoring supplied.)

"In your decision of July 13, 1943 (b-23881) and your opinion of March 11, 1944 to Congressman Tarver, with respect to the import of the foregoing provision, it was indicated that the then applicable appropriation language, similar in all essential respects to that in this year's Appropriation Act, implies that expenditures from funds appropriated for such purpose are proper 'if they clearly are in connection with the "liguidation as expenditiously as possible of any such projects heretofore initiated."'

"It would appear reasonable to conclude therefrom that the practicable and expenditious accomplishment of liquidation within the mandate of Congress, would, of necessity, involve the making of such expenditures as are reasonably necessary to accomplish that purpose or are essential for the protection and safeguarding of the Government's security, consistent with the best interest of the Government pending completion of such liquidation. As has been hereinabove indicated, the tax liens on the lands in question after impede the sale of such property since the Government is unable to convey clear title to the land unless the taxes are paid. Where, as in most cases, the sale is made on credit, the Government's mortgages, of source, are subject to the tax lien. Although every effort is made to induce the purchaser to pay such taxes out of his own funds, in many cases the purchasers do not have the immediate financial resources to pay such taxes. In addition, such procedure is often impracticable, for in many States the local taxing authorities have assessed the original project property as a whole and are unwilling or legally unable to apportion the lien upon an individual farm unit basis. Under those circumstances, we believe that the payment of those valid liens by the Government, where expedient, may be deemed as reasonably necessary to accom;lish the expeditious liquidation of the property in question.

"An expression of your views on this matter as a guide to our action will be

appreciated."

As stated in your letter, property acquired by the United States, on or after the tax lien date as fixed by statute, is encumbered by such liens although such liens are unenforceable so long as the property is held by the Goverment. United States v. Alabama, 313 U.S. 274. The question whether payment of such liens should be made by the United Stataes in order to effect a marketable title primarily is for administrative determination. B-21817, February 12, 1942; B-28443, December 9, 1943; and B-41677, May 8, 1944.

In the cases described it does not appear practicable to require the purchasers to liquidate the tax liens because no separate tax bills exist as against the separate tracts into which certain larger tracts have been divided. Accordingly, in view of the matters set forth in your letter, and in the light of the cited precedents, you are advised that if it be determined administratively to be in the best interest of the Government to discharge the tax liens, in connection with the liquidatin of the involved projects, in the actual sale of the property and conveyence of an unancumbered title thereto to the private purchasers thereof, the appropriation made for liquidation of such projects may be considered available for such purpose.

Respectfully,

Comptroller General of the United States.