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B-41677 May 8, 1944

Number: B-41677

Date: 1944-05-08

B-41677 May 8, 1944

The Honorable, The Secretary of Agriculture

My dear Mr. Secretary:

I have your letter of April 27, 1944, as follows:

"On April 6, 1943, the United States of America (Farm Credit Administration) obtained a deed from the United States Marshall in and for the Northern District of Texas to property previously owned by the Lockney Wheat Growers Incorporated, Lockney, Texas, which deed was recorded on May 22, 1943, by the Clerk of the County Court of Floyd County, Texas.

"The Farm Credit Administration is now desirous of advertising this property for bids at an early date in order that it may be sold before the movement of grain this year in Texas, which begins early in June.

"The taxes on the property have not been paid for the years 1941, 1942, and 1943. The total amount of the unpaid taxes, together with the penalties, will probably amount to approximately $400.00. Taxes for the year 1943 became a lien on the property on January 1, 1943, and of course the taxes for 1941 and 1942 became liens on the property prior thereto. It appears clear, therefore, that the United States acquired the property subject to the tax liens for the three years in question (United States v. Davidson, 139 F. 2ed 908; Childress County v. State, 92 S.W. 2d 1011, 93 S.W. 2d 1031).

"It seems that these tax liens will continue to stand against the property until they are paid (Sec. 7172, Vernon's Texas Civil Statutes) unless they may be avoided on the theory that the lien of the United States mortgage was superior to the tax liens. We are informed that the United States District Court for the District of South Dakota, Western Division, has apparently indicated that it will rule against the Government on a similar question involving property at Wasta, South Dakota. A tax lien in the State of Texas is ordinarily superior to a prior mortgage lien (Childress v. State, 92 S.W. 2d 1011, 93 S.W. 2d 1031). In this case a tax lien was held superior to a prior purchase money mortgage held by the county.

"The Farm Credit Administration is of the opinion that the elevator property at Lockney, Texas, may be sold to much better advantage if the taxes are paid prior to the sale.

"Under the circumstances, permission is respectfully requested to permit the

Farm Credit Administration to pay the taxes and penalties against the property at Lockney, Texas, for the years 1941, 1942, and 1943. In view of the fact that it is desired to advertise the property for sale as soon as possible, prompt action on this matter will be appreciated."

In view of the matters set forth in the above-quoted letter, and in the absence of an authoritative judicial determination that a pre-existing mortgage lien of the United States is entitled to precedence over a valid tax lien of a State, you are advised that if it be determined administratively that it will not be judicious to litigate that question insofar as the instant alleged tax liens are concerned and that it will be to the best interests of the United States to clear the title to the property here involved by discharging said liens, this office will not be required to object 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, and my decision of December 9, 1943, to you, B-28443.

Respectfully,

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