

April 20, 2005
OPINION NO. 05-0117

73-A NOTICE REQUIREMENTS
90-B-1 PUBLIC LANDS
90-B-2 PUBLIC LANDS
159 TAXATION
93 SALES
115 TAXATION

La. Const. Art. VII, §§ 14 & 25
La. R.S. 33:2861 et seq.
La. R.S. 33:4712
La. R.S. 33:4717.3
La. R.S. 33:4720.29 et seq.
La. R.S. 47:2180 & 47:2180.1
La. R.S. 47:2186
La. R.S. 47:2221 et seq.

Attorney General Opinion Nos. 91-530 & 91-663

A municipality has the authority to allow for redemption of adjudicated property beyond the expiration of the redemptive period as long as the property has not been sold or contracted to sell. Adjudicated property may be sold, donated, or used by the adjudicating municipality, subject to certain limitations. Attorney General Opinion 91-663 remains valid as to the issues of redemption and notice with regard to adjudicated properties.

Honorable Hilda Curry
Mayor, City of New Iberia
457 East Main Street, Suite 300
New Iberia, LA 70560-3700

Dear Ms. Curry:

On behalf of the City of New Iberia, your predecessor, Mayor Ruth Fontenot, requested the opinion of our office with regard to whether the City has the authority to allow for redemptions of tax sale properties after the running of the three-year redemption period following adjudication of the property to the City. Additionally, you have requested guidance as to what procedures may be employed to sell, donate, or use adjudicated properties. Finally, in a separate, but related question, you have asked if the procedure for allowing for redemption after the tolling of the three-year redemptive period as discussed in Attorney General Opinion 91-663, when the tax debtor was not given proper notice of the delinquency, is proper and if it is not, what actions can be taken to cure or cancel the tax sales.

Redemptions by the tax debtor after adjudication must be allowed for three years following the recordation of the tax sale. La. Const. Art. VII, Sec. 25. During this three-year period, these properties are redeemable by paying the various costs and penalties that are associated with the adjudicated property. *Id.* Though the Constitution and the Revised Statutes contain a time limit during which the tax debtor must be allowed to redeem the property, *id.* and La. R.S. 47:2221 et seq., there is no law on when the tax debtor must be refused if they want to redeem after the three year redemption period. According to La. R.S. 47:2224, a municipality shall allow the tax debtor to redeem property beyond the end of the three-year redemption period as long as the property has not been sold or contracted to be sold at the time of the redemption. Therefore, it is the opinion of this office that a municipality does not have to bar redemption of property by the tax debtor after the tolling of the three-year redemption period. However, if the three-year redemption period has run and the adjudicated lands have been sold at a tax

OPINION NO. 05-0117

Honorable Hilda Curry
Mayor, City of New Iberia
Page No. 2

sale, the tax sale purchaser can follow a procedure to quiet title to the property. This mechanism, outlined in La. R.S. 47:2228, does allow for the tax debtor to be cut off from redemption. Briefly, following the lapse of the three-year redemption period, a tax sale purchaser may institute a suit to quiet the tax title. The tax debtor has, once such a suit has been filed, six months in which to annul the sale for prior payment of taxes due. If no such annulment is filed by the end of the six month period, a judgment shall be rendered quieting and confirming the purchaser's title to the property. La. R.S. 47:2228.

The tax debtor may, as mentioned above, also attempt to annul a tax sale based on prior payment of taxes due under La. Const. Art. VII, Sec. 25(C) and La. R.S. 47:2226 and 47:2227. Tax debtors have five years in which to institute a suit to annul a tax sale for unpaid taxes. La. Const. Art. VII, Sec. 25(C). This period may run concurrently with the three-year redemptive period. However, the five-year annulment period does not commence until after the tax debtor has been corporeally dispossessed of the property. La. R.S. 47:2226. If no suit to annul or to quiet a tax sale has been brought by the end of the five-year annulment period, the purchaser may file a suit or a motion proceeding to quiet title. The delay for answering a suit to quiet title after the tolling of the five-year annulment period is only ten days. La. R.S. 47:2228.

Although it may appear that a tax sale can be absolutely quieted at the end of the fifth year following recordation, there is a possibility that the prescriptive period for the five-year annulment may not run concurrently with the three-year redemptive period. Such a scenario could occur if, following recordation of a tax sale, the tax debtor is not immediately corporeally dispossessed of the property. In such a situation, the five-year annulment period would not begin until such dispossession has occurred. La. R.S. 47:2226. Theoretically, if a tax debtor is not relieved of possession until after the tolling of the three-year redemptive period, then the period to annul the sale will not run until the eighth year following the recordation of the tax sale. This delay may even be extended by an additional six months if dispossession does not occur until after the six month period for answering the action to quiet title following the end of the redemptive period.

Based on the foregoing review, it is the opinion of this office that a municipality has the authority to allow for the redemption of adjudicated property beyond the tolling of the three-year redemptive period. Additionally, though the five-year annulment period may end anywhere from five to eight and a half years after the recordation of the tax sale, a municipality is not restricted from allowing the tax debtor to redeem their property, either during or after, the annulment period. Any such redemption must simply follow the procedures for redeeming tax delinquent property as set forth in La. R.S. 47:2224 or 47:2225 and will only be limited, following the end of the redemptive period, by the sale or contract to sell the adjudicated property.

Adjudicated property may be sold, donated, or used by the adjudicating municipality, subject to certain limitations. Generally, a "municipality may sell, lease for a term of up to ninety-nine years, exchange, or otherwise dispose of...any property which is, in the

OPINION NO. 05-0117

Honorable Hilda Curry
Mayor, City of New Iberia
Page No. 3

opinion of the governing authority, not needed for public purposes.” La. R.S. 33:4712(A). Such a disposition of property must be pursuant to an ordinance that contains the reasons for the disposition, a minimum price, and the terms of the disposition. La. R.S. 33:4712(B). For specific procedural requirements for disposing of such property, we direct you to La. R.S. 33:2864 et seq. Donations of adjudicated properties are somewhat more restricted. Under La. Const. Art. VII, Sec. 14(B)(6), “the donation of abandoned or blighted housing property by the governing authority of a municipality or a parish to a nonprofit organization which is recognized by the Internal Revenue Service as a 501(c)(3) or 501(c)(4) nonprofit organization and which agrees to renovate and maintain such property until the conveyance of the property by such an organization” is permitted. This permission is a deviation from the general prohibition against donating state property under La. Const. Art. VII, Sec. 14. Thus, as to donations, adjudicated property can only be disposed of to a 501(c)(3) or 501(c)(4) nonprofit organization that intends to renovate the property. See also La. R.S. 33:4717.3. For specific procedural requirements for disposing of such property, we direct you to La. R.S. 33:4720.29 et seq. As to the use of adjudicated property by a municipality, according to Attorney General Opinion 91-530, property adjudicated to political subdivisions of the State subsequent to 1974 is under the authority of those subdivisions to administer. However, there are limitations to the extent to which these properties may be used. The properties may be leased by the municipality, with the rentals being used to pay down the tax debtor’s obligation to the adjudicating body. La. R.S. 33:2862. Once those obligations have been repaid, the property must be returned to the tax debtor. La. R.S. 33:2864(A). Additionally, the municipality, may, after the end of the redemptive period, sell the tax debtor’s property pursuant to La. R.S. 33:2861 et seq. There is no provision in the Revised Statutes that allows for an adjudicating political subdivision to put property to any use it sees fit. Rather, it is our opinion that such property must be used in a manner calculated to repay the political subdivision for the charges incurred by the tax debtor. For the specific procedures and other matters related to use, we direct you to La. R.S. 33:2861 et seq.

Attorney General Opinion 91-663 remains valid as to the issues of redemption and notice with regard to adjudicated properties. By way of review, Article VII, Sec. 25 of the Louisiana Constitution of 1974 mandates that, “at the expiration of the year in which the taxes are due, the [tax] collector, without suit, and after giving notice to the delinquent in the manner provided by law, shall advertise for sale the property on which the taxes are due.” Pursuant to this provision of the Constitution, the Legislature enacted La. R.S. 47:2180 and 41:2180.1. These statutes set forth the procedures for notifying property owners who are delinquent in paying their taxes and mortgagees with a properly recorded interest in the property. Louisiana Revised Statute 47:2180(A)(1)(a) provides that, in pertinent part, “...the tax collector shall address to each taxpayer who has not paid all the taxes...written or printed notice...that his taxes on immovable property must be paid within twenty days after the service or mailing of the notice, or that the property will be sold according to law.” This statute further provides that such notices must be sent each year following the original notice of delinquency until such a time as the redemptive period has expired. La. R.S.

OPINION NO. 05-0117

Honorable Hilda Curry
Mayor, City of New Iberia
Page No. 4

47:2180(A)(1)(b). The notice must be sent by certified mail with return receipt requested. La. R.S. 47:2180(B). However, there is no requirement that the tax debtor actually receive the notice, only that it is sent. *Id.* Additionally, following an adjudication of the tax debtor's property to the State, the tax collector shall "notify the tax debtor in writing...that within thirty days he will take actual corporeal possession of the property so adjudicated..." La. R.S. 47:2186. Further, in the interest of due process, the tax collector must send the same two notices, in the same manner as for the property owner, to every person that holds a properly recorded mortgage on the immovable property, and who have notified the tax collector of the mortgage, for which the taxes are delinquent. These individuals must be informed that the taxes on the property must be paid within twenty days. La. R.S. 2180.1; Attorney General Opinion 91-663. It is our opinion that the failure to so notify the tax debtor and the mortgagees is an abridgement of those individuals' due process and statutory rights and that such a failure would have the effect of nullifying any subsequent tax sale of the adjudicated property. This position is supported by more than a century's worth of case law. See e.g., *LeBlanc v. Blodgett*, 34 La. Ann. 107 (1882); *Colvin v. Ferguson*, 564 So.2d 775 (App. 2 Cir. 1990). Further, the redemptive period on tax delinquent property does not begin to run until proper notice has been sent. Thus, the failure to properly notify the tax debtor or the mortgagee allows these individuals the right to redeem the property and/or to attack the validity of the tax sale after the three-year redemption period and the five-year annulment period have run. *State Through Dept. of Transp. & Development v. Knight*, 631 So.2d 714 (La.App. 3 Cir. 2/2/94). Based upon the foregoing review, it is the opinion of our office that Attorney General Opinion 91-663 remains valid and adequately outlines the proper procedure with respect to the notice requirements for adjudicated property and that that opinion, in conjunction with the review set forth herein should continue to serve as guidance on such matters of notice.

We hope this sufficiently answers your inquiry, however if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
RYAN M. SEIDEMANN
Assistant Attorney General

CCF, Jr./RMS/tp

OPINION NO. 05-0117
Honorable Hilda Curry
Mayor, City of New Iberia
Page No. 5

OPINION NO. 05-0117

73-A NOTICE REQUIREMENTS

90-B-1 PUBLIC LANDS
90-B-2 PUBLIC LANDS
159 TAXATION
93 SALES
115 TAXATION

La. Const. Art. VII, §§ 14 & 25
La. R.S. 33:2861 et seq.
La. R.S. 33:4712
La. R.S. 33:4717.3
La. R.S. 33:4720.29 et seq.
La. R.S. 47:2180 & 47:2180.1
La. R.S. 47:2186
La. R.S. 47:2221 et seq.

Attorney General Opinion Nos. 91-530 & 91-663

A municipality has the authority to allow for redemption of adjudicated property beyond the expiration of the redemptive period as long as the property has not been sold or contracted to sell. Adjudicated property may be sold, donated, or used by the adjudicating municipality, subject to certain limitations. Attorney General Opinion 91-663 remains valid as to the issues of redemption and notice with regard to adjudicated properties.

DATE REQUESTED: September 10, 2003

DATE RELEASED: April 20, 2005

REQUESTED BY: Ruth Fontenot, Mayor
New Iberia
457 East Main Street, Suite 300
New Iberia, LA 70560-3700

AUTHOR: RYAN SEIDEMANN
ASSISTANT ATTORNEY GENERAL