



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 11, 2021

Mayor Phil Fuller
Village of Pachuta
Post Office Box 189
Pachuta, Mississippi 39347

William C. Hammack, Esq.
Attorney for Clarke County
1724 A 23rd Avenue
Meridian, Mississippi 39301

Re: Payment of Taxes After Acquisition of Property by Municipality

Dear Mayor Fuller and Mr. Hammack:

The Office of the Attorney General has received your requests for official opinions on the same matter.

Background

According to your requests, the Village of Pachuta (the “Village”) purchased real property within its municipal limits in January 2020 from a private, non-governmental entity/individual. In negotiations for the purchase, the Village agreed to pay the ad valorem taxes for 2019, “dispense with” the taxes for 2020, and, thereafter, requested the Clarke County Board of Supervisors (the “County Board”) to forgive the 2019 ad valorem taxes. The County Board adopted an order in late 2019 purporting to forgive that year’s taxes when they became due. However, the County subsequently sold the property at its annual tax sale in August 2020.

Issues Presented

1. May the Village pay the 2019 and 2020 taxes?
2. May the County Board and Tax Collector forgive unpaid taxes and cancel the tax sale, when all participants in the sale relied upon the County Board’s forgiveness order even though private entities owned the property for the entirety of the 2019 tax year, and even though the said private parties paid no taxes for 2019 (through pro-ration or otherwise) or for the short period in 2020 prior to the conveyance to the purchaser (a municipality)?

3. Are existing tax liens protecting a public taxing authority immediately extinguished upon the acquisition by a separate public body of the property to which the tax liens relate?

Brief Response

In response to the first question, if the Village agreed as part of its purchase agreement with the previous owner, to pay ad valorem taxes on the property, it may pay such taxes consistent with certain limitations. However, because the Village has no authority to assume a tax liability, the County cannot compel the Village to pay the taxes.

In response to the second and third questions, the County Board has no authority to forgive unpaid taxes owed by the previous land owner, as such forgiveness would amount to an unlawful donation. We have previously opined that real property owned by a public body may not be sold for unpaid taxes since any tax lien is extinguished as of the date of its acquisition.

Applicable Law and Discussion

As a threshold matter, official opinions of this office are issued on prospective questions of state law pursuant to Mississippi Code Annotated Section 7-5-25. An Attorney General's opinion can neither validate nor invalidate past action. MS AG Op., *Magee* at *1 (Aug. 29, 2008); MS AG Op., *Brock* at *1 (Nov. 8, 2019) (citing Miss. Code Ann. § 7-5-25). Accordingly, this office provides the following guidance for future application only.

With respect to your first question, this office has previously analyzed a factual scenario similar to yours, wherein a regional housing authority—a tax-exempt public body—purchased property mid-year from taxable entities/individuals. MS AG Op., *Mathis* (March 16, 2009); MS AG Op., *Mathis* (June 20, 2008). There, we opined the County was prohibited from assessing taxes on real estate the housing authority purchased, mid-year, from a taxable entity.

Moreover, “the owner of the property on January 1 is required to pay the full amount of taxes for the ensuing year.” MS AG Op., *Seard* at *1 (Aug. 15, 2008). “This is the case even if the property is transferred to an exempt party during the middle of the year.” *Id.* (citing MS AG Op., *Ellis* (Feb. 21, 1990)). In addition, “[b]ecause the year's taxes on real estate may not be attributed to the exempt and non-exempt parties pro-rata by time of ownership, the County must look to the titleholder at the time of assessment for the payment of taxes owed on the entire year.” MS AG Op., *Mathis* at *1 (June 20, 2008).

“With respect to the authority of a municipality to pay current ad valorem taxes, we have previously recognized that a public body may agree, as a part of a purchase contract or lease agreement, to pay an amount that is equal to the current year's taxes.” MS AG Op., *Hollingsworth* at *3 (Oct. 11, 2013) (citing MS AG Op., *Mathis* at *1 (June 20, 2008)). “In regard to any delinquent ad valorem taxes, a municipality, as a part of a purchase contract, may agree to pay as consideration a certain amount of money, up to the fair market value, to offset the land owner's personal tax liability.” “However, the exempt party has no authority to assume a tax liability.” MS AG Op., *Mathis* at *1 (Mar. 16, 2009) (citing MS AG Op., *Greco* (Feb. 9, 2001)).

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Accordingly, if the Village, as part of its purchase agreement for the subject property, agreed to pay certain ad valorem taxes on the property, it could do so, subject to these limitations. However, the County may not require the Village to pay taxes on the property in question, since the Village could not assume the previous owner's tax liability.

Turning to your second and third questions, the County may not forgive or reduce the amount of ad valorem taxes due. MS AG Op., *Riley* at *2 (Mar. 10, 2017) ("There is no authority for a county board of supervisors to forgive or reduce the amount of ad valorem taxes, penalties and interest due on property."). A county's failure "to collect the taxes, including mandatory penalties and interest, from the taxpayer entity would amount to extinguishing a debt that is due and owing to the County in violation of Art. 4, Section 100 of the Mississippi Constitution." *Id.*; (citing MS AG Op., *Lewis* (Oct. 3, 2014)).

It is well-established that any ad valorem tax lien against real property is extinguished upon acquisition of such real property by a public body. *Davis v. City of Biloxi*, 184 So. 76, 78 (Miss. 1938); MS AG Op., *Miller* (Feb. 23, 1995) (tax lien extinguished when property acquired by state); MS AG Op., *Melton* (Mar. 9, 1994) (tax liens extinguished when property acquired by public entity); MS AG Op., *Eaton* (Apr. 14, 1993) (ad valorem lien extinguished if public body acquires real property). The previous owner of the property acquired by the municipality remains personally liable for the ad valorem taxes owed on the real property. MS AG Op., *Mathis* (June 20, 2008); MS AG Op., *Prichard* (August 7, 1998). In addition, we have previously opined that real property owned by a public body may not be sold for unpaid taxes since any tax lien is extinguished as of the date of acquisition. MS AG Op., *Mathis* (March 16, 2009); *see also* MS AG Op., *Riley* (Nov. 9, 2018) (discussing avoidance of tax sale where such "tax sales were, in the first instance, improper.").

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Phil Carter

Phil Carter
Special Assistant Attorney General