

RONNY LOTT
MADISON COUNTY CHANCERY CLERK

MEMORANDUM

TO: Madison County Board of Supervisors

FROM: Ronny Lott, Chancery Clerk

DATE: August 9, 2021

RE: Void 2019 and 2020 Tax Sales
James Whitehead, Parcel No. 051E-16D-002/00.00

I am requesting you allow me to void parcel no. 051E-16D-002/00.00 from the August 26, 2019 tax sale and August 31, 2020 tax sale against James Whitehead. Mr. Whitehead entered into an Assignment of Agricultural Lease Contract on said parcel with Mr. Micah Walker on December 20, 2018. Thereafter, Mr. Walker entered into a 16th Section Agricultural Lease Contract with the Madison County School District on January 28, 2021.

Pursuant to several Attorney General Opinion's , the latest being MS Ag. Op., Harpole (April 10, 1998), "a new lease holder is not responsible for taxes not paid by a prior lessee."

Therefore, I respectfully request that you authorize me to void the August 2019 and August 2020 tax sales on parcel number 051E-16D-002/00.00 and direct the Tax Collector to collect the 2020 taxes currently due.

August 4, 2021

Mr. Norman A. Cannady, Jr.
Madison County Tax Assessor
125 West North St.
Canton, MS 39046

John S. Hooks
Admitted in Mississippi
and District of Columbia
Direct: 601.292.0708
E-Fax: 601.944.9037
john.hooks@arlaw.com

Mr. Ronny Lott
Madison County Chancery Clerk
146 West Center St.
Canton, MS 39046

2018 & 2019 (James Whitehead)

Re: Property Taxes for Parcel Nos. 051E-16D-002/00.00

Dear Mr. Cannady and Mr. Lott:

Our firm represents the Madison County School District. We write regarding the past due property taxes for 2018 on the referenced parcel.

The referenced parcel is sixteenth section land leased to Micah Walker. Mr. Walker took an Assignment of Agricultural Lease Contract on the reference parcel on December 20, 2018, recorded at Book 3683, Page 899. On January 28, 2021, Mr. Walker entered into a 16th Section Agricultural Lease Contract for the referenced parcel, recorded at Book 3997, Page 143.

On July 6, 2021, the District received a "Notice of Forfeiture to Land Owners" for the referenced parcel related to the lease previously held by William S. Anthony, Sr. On July 30, 2021, the District's 16th Section Lands Manager Ashley Browning received a call from the Chancery Clerk's office stating that a message had been left for Mr. Walker regarding the unpaid taxes for 2018, and that Mr. Walker will not be able to pay the current taxes until the delinquent taxes are paid.

To the extent the County seeks to hold liable for the past due taxes, Mr. Walker is not liable for amounts owed by a prior lessee. Further, it is not the responsibility of Mr. Walker or the District to collect unpaid taxes from a prior lessee. The Attorney General has opined on this issue several times, advising that a "new lease holder is not responsible for taxes not paid by a prior lessee." MS Ag. Op., Harpole (April 10, 1998). See also, MS Ag. Op., Barbour (June 23, 1987); MS Ag. Op., Griffith (February 16, 1983). Copies of these opinions are attached.

Norman A. Cannady, Jr.
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The District submits there is no authority to hold Mr. Walker, the current lessee, liable for the prior lessee's failure to pay property taxes.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink that reads "John S. Hooks". The signature is written in a cursive style with a large, stylized "H" and "S".

John S. Hooks

JSH/jbd
Enclosures

Cc: Ms. Ashley Browning, Sixteenth Section Lands Manager
Madison County School District

1998 WL 224285, MS. SHEILA HARPOLE CRAWFORD, April 10, 1998

Office of the Attorney General

State of Mississippi

Opinion No. 98-0199

April 10, 1998

Re: Tax Sales of Sixteenth Section Lands

Ms. Sheila Harpole Crawford

Chancery Clerk, Leake County

P. O. Box 72

Carthage, Mississippi 39051

Dear Ms. Crawford:

Attorney General Mike Moore has received your request for an Official Opinion from this office and has assigned it to me for research and reply.

We answer your questions *seriatim*. All references to Sections hereinafter are references to the *Mississippi Code of 1972*.

1. In accordance with Sections 27-35-71 and 29-3-71 of the Mississippi Code of 1972, should taxes on sixteenth section land be sold at a tax sale for the Chancery Clerk to collect thereafter, or should the taxes be collected by the Tax Collector-Assessor as personal property or mobile home taxes which become delinquent?

We have previously opined in MS AG Op., Smith (October 2, 1992), a copy of which is attached hereto, that:

the Sixteenth Section Land itself is exempt from taxes and cannot be sold for taxes. The leasehold interest is taxable and may be sold for failure to pay taxes. If the leasehold interest was sold, then via that sale, the county collected its taxes and there are no outstanding taxes. The purchaser of the leasehold interest continues the lease for the balance of the term paying all future taxes as they accrue. Since no redemption occurred, the balance of the lease matured to the tax sale purchaser. The remainder of the lease is all that was purchased and when the lease expired, taxes no longer accrue.

We opine that since a sale for taxes of a sixteenth section land leasehold is deemed to pay the taxes, personal liability therefor is extinguished by such sale, and there is no subsequent duty upon a chancery clerk or a tax assessor and collector to collect said unpaid taxes.

See also MS AG Op., Leonard (December 18, 1985), a copy of which is enclosed.

2. If these taxes are not sold on sixteenth section land, what authority does the Chancery Clerk have to collect these taxes?

Section 27-41-11 provides in pertinent part:

It shall be the duty of every person assessed with state, county, school, road, levee and other taxing district and municipal ad valorem taxes to pay all such taxes to the tax collector on or before the due dates fixed and prescribed in Section 27-41-1 hereof, and if not paid, it shall be the duty of the tax collector to enforce payment thereof as hereinafter provided.

We enclose a copy of MS AG Op., Sanders (March 4, 1993), wherein we opined that it is the duty of the tax collector to collect unpaid taxes even when the delinquencies occurred before the present tax collector took office.

We find no statute imposing a duty upon a chancery clerk to collect unpaid ad valorem taxes.

3. How soon after the taxes become delinquent should the lease be canceled?

If the lease of sixteenth section land contains a provision that the lease terminates upon non-payment of ad valorem taxes, the lease will terminate upon the date specified therein. Therefore, reference to each specific lease is required, and we cannot answer this question without reviewing the lease. *See* MS AG Op., Graves (August 7, 1984), a copy of which is enclosed.

In regard to termination of a leasehold wherein the lease is silent as to the payment of ad valorem taxes, we invite your attention to the enclosed copy of MS AG Op., Griffith (February 16, 1983), wherein we opined that a purchaser at a tax sale of a sixteenth section leasehold acquires the remainder of the lease, subject to the right of redemption in the lessee, and that a sale to the state extinguishes the lessee's rights in the leasehold, again subject to the right of redemption in the lessee. *See also* MS AG Op., Walker (September 3, 1991), a copy of which is enclosed.

4. Are the new lease holders responsible for any back taxes owed by the prior lessee?

In MS AG Op., Barbour (June 23, 1987) and in MS AG Op., Griffith (February 16, 1983), we opined that a new lease holder is not responsible for taxes not paid by a prior lessee. Copies of these opinions are enclosed.

Very truly yours,

Mike Moore

Attorney General

By: Edwin T. Cofer

Special Assistant Attorney General

7/29/2021

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1977; and Ms. Mattie M. Lee on September 28, 1973.

*2 In specific reference to your second inquiry, if the lease expired for failure to pay delinquent taxes, then a new lessee would not be obligated to pay the delinquent taxes.

*2 If this office can be of benefit in the future, please do not hesitate to contact us.
Sincerely,

*2 Bill Allain
*2 Attorney General

1983 WL 43197 (Miss.A.G.)

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