



2011-087

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Jerry Guthrie
Walker County Revenue Commissioner
Walker County Courthouse
Jasper, Alabama 35501

**BEFORE RELYING ON THIS
OPINION, PLEASE REVIEW FIRST
UNION NAT. BANK OF FLORIDA V.
LEE COUNTY COMM'N, 75 SO. 3D
105 (ALA. 2011).**

Ad Valorem Taxes – Tax Sales –
Excess Funds – Refunds – Revenue
Commissioners

The excess funds arising from a tax
sale should not be paid to the
original owner of the property sold
for taxes when the original owner
has conveyed all rights to the
property to another.

Dear Commissioner Guthrie:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

Where the original owner of property
following a tax sale has conveyed his right,
title, and interest in and to the property, could
that particular person demand from the county
treasurer excess funds received from the tax
sale?

FACTS AND ANALYSIS

According to your request, person "A" owned property in your
county. After "A" failed to pay the 2004 ad valorem taxes that were due

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on the property, the property was sold for nonpayment to the highest bidder on May 2, 2005. The bid amount was \$3,000. After deducting all delinquent taxes, fees, charges, costs, and expenses of sale, the resulting excess totaled \$2,871.46. Ultimately, a tax deed was issued to the tax sale purchaser three years later on May 14, 2008. On August 28, 2009, the original owner of the property that was sold at the tax sale, "A," conveyed his rights in the subject property to person "B." Person "A" now makes claim to the county treasurer for the excess of \$2,871.46. Your question asks if "A" has a right to the excess.

Section 40-10-28 of the Code of Alabama addresses the disposition of excess arising from tax sales. It states as follows:

The excess arising from the sale of any real estate remaining after the amount of the decree of sale, and the costs and expenses subsequently accruing, shall be paid over to the owner, or his agent, or to the person legally representing such owner, or into the county treasury, and it may be paid therefrom to such owner, agent or representative in the same manner as to the excess arising from the sale of personal property sold for taxes is paid. If such excess is not called for within three years after such sale by the person entitled to receive the same, upon the order of the county commission stating the case or cases in which such excess was paid, together with a description of the lands sold, when sold and the amount of such excess, the county treasurer shall place such excess of money to the credit of the general fund of the county and make a record on his books of the same, and such money shall thereafter be treated as part of the general fund of the county. At any time within 10 years after such excess has been passed to the credit of the general fund of the county, the county commission may on proof made by any person that he is the rightful owner of such excess of money order the payment thereof to such owner, his heir or legal representative, but if not so

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ordered and paid within such time, the same shall become the property of the county.

ALA. CODE § 40-10-28 (2003).

This Office issued an opinion to Honorable Preston Hornsby, Judge of Probate of Macon County, dated July 26, 1983, A.G. No. 83-00401, concerning the disposition of excess arising from a tax sale. That opinion stated that “[i]t is apparent from reading §40-10-28 that the excess arising from the sale of the real estate is properly payable to the former owner, i.e. the person who initially failed to pay his taxes on the property.” *Id.* That opinion, however, did not involve the former owner conveying his or her rights in the subject property to another person before making a claim for the excess.

This Office also issued an opinion to Honorable Patrick D. Pinkston, Elmore County Attorney, dated March 26, 2009, A.G. No. 2009-058, that gives further guidance. In *Pinkston*, certain companies were persuading individuals in Elmore County to convey away their right to excess funds. The opinion noted that for a service fee, the company would attempt to retrieve the excess on behalf of the original owner. The question in that opinion asked whether Elmore County could rightfully pay over any excess to these third parties. This Office opined that Elmore County could rightfully pay over any excess in such a manner. The opinion stated that the “[e]xcess proceeds arising from a tax sale are properly payable to the owner of the property or a representative or agent of the owner. The original owner can contract with a third party to receive the excess funds.” *Id.*

In your request, you submitted for review the warranty deed conveying the property from “A” to “B.” In that warranty deed, “A” grants, bargains, sells, and conveys to “B” the subject property “together with all and singular the tenements, hereditaments, rights, privileges and appurtenances thereto belonging or in anywise appertaining.” State of Alabama, Walker County, *Warranty Deed* (Aug. 28, 2009). It appears from the language of the warranty deed that the original owner has given up all rights to the property, including the right to receive the excess arising from the prior tax sale.

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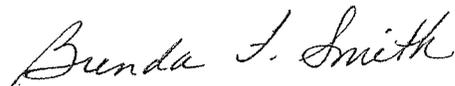
CONCLUSION

The excess funds arising from a tax sale should not be paid to the original owner of the property sold for taxes when the original owner has conveyed all rights to the property to another.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Keith Maddox, Legal Division, Department of Revenue.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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