

Approved March 22, 1989
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~ on March 21, 1989 in room 531-N of the Capitol.

All members were present except:

Sen. Gaines - Excused

Committee staff present:

Mike Heim, Legislative Research
Emalene Correll, Legislative Research
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Bill Curtis, Kansas Association of School Boards
David Corliss, League of Kansas Municipalities
Kelly Arnold, City of Lawrence
Rep. Michael Peterson

The hearing began on HB 2061 amending the Kansas municipal group-funded pool act as it relates to boards of trustees pools. Bill Curtis, Kansas Association of School Boards, testified in support of the bill. (See Attachment I.) The bill is a duplicate of SB 57 which has been held in this committee.

Sen. Allen made a motion to recommend HB 2061 favorable for passage, Sen. Burke seconded, and the motion carried.

Attention was turned to HB 2077 concerning delinquent property tax as it relates to the sale of property and publication notice by the county. David Corliss, League of Kansas Municipalities, testified in support of the bill. (See Attachment II.) The Chairman asked Mr. Corliss if the League has a position on the House amendments. Mr. Corliss had no position. Sen. Steineger began a discussion about the period of time involved in the sale of tax foreclosure property. Mr. Corliss noted that the attachment to his written testimony should answer questions in this area.

Kelly Arnold, City of Lawrence, gave further testimony in support of the bill. (See Attachment III.) The Chairman asked Mr. Arnold if he has a position on the House amendments. Mr. Kelly had no comments on the amendments.

Rep. Michael Peterson gave final testimony. He is responsible for the amended language in the bill. He said the need arose after 1982 when the right of an office holder elected by the people was cut out of the statutes. Before that time, treasurers had been allowed to pick the newspaper for publication. The amendments give back the authority to the treasurers to publish notice of sale of property in a newspaper in general circulation in the county, not just the official county publication. Also, the present cost of \$5 is not paying for the publications, and the bill would raise it to \$15.

The Chairman had received a letter from the Register of Deeds Association in support of HB 2077. (See Attachment IV.)

Sen. Burke made a motion to recommend HB 2077 favorable for passage, Sen. Petty seconded, and the motion carried.

The minutes of March 20 were approved.

The meeting was adjourned.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony before the Senate Local Government Committee

by

**Bill Curtis, Assistant Executive Director
Kansas Association of School Boards**

March 21, 1989

Mr. Chairman and members of the committee, we appreciate the opportunity to testify today on HB 2061 on behalf of the Kansas Association of School Boards. This bill was introduced at the request of our association. It simply strikes the maximum number of people that may serve on the board of trustees of a group-funded pool.

As KASB expands the number of pools, the question of creating a separate board for each pool becomes important. Our current board, governing the workers' compensation pool, would like to see the same board for all pools. However, that creates a problem in terms of orientation and information, if all trustees must become familiar with all lines of insurance. Most of the trustees are not knowledgeable about insurance matters. It takes a great deal of time and effort to educate them. Instead, we have decided to pursue a committee structure within the existing board of trustees. Each pool would be governed by the same board but many of the decisions regarding each pool would be resolved by a committee of approximately five people. Those five would then report back to the full board.

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Attachment I*

If our plans for expanding are successful, there will be four or five different pools. That could mean a board of trustees with as many as 25 people. Each trustee then would only need to be familiar with one type of insurance. One board for all pools would be more efficient and economical.

We appreciate the attention of the committee and urge your support for HB 2061.

Senate L.G.
3-21-89
I-2



**League
of Kansas
Municipalities**

**Municipal
Legislative
Testimony**

An Instrumentality of its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565

TO: Senate Committee on Local Government
 FROM: David Corliss
 DATE: March 21, 1989
 RE: HB 2077 - Recording of Delinquent Tax Deeds

Section 3 of HB 2077 amends K.S.A. 79-2804 to provide that a sheriff's deed from a property tax foreclosure sale be recorded at the time the deed is executed to the successful bidder. The League's convention-adopted Statement of Municipal Policy provides: "All transfers of the ownership of property resulting from judicial foreclosures for delinquent taxes should be automatically recorded with the register of deeds." The League does not have a position on the bill's other provisions.

Need for Legislation: Currently, the law places the responsibility for filing the sheriff's deed on the purchaser of property from the tax foreclosure sale of tax delinquent property. It is not uncommon for those purchasers to delay for an extended period the filing and recording of the deed. The non-filing of the deed can cause significant interference with several important municipal functions that require accurate and up-to-date property ownership information. Special assessments, nuisance abatement, condemnation, rezoning, and annexation are among the municipal services which require identification and notification of property owners. Some statutes require a notice, hearing and protest opportunity for property owners, which is difficult to accomplish when the ownership is not recorded.

Explanation of Bill. HB 2077 would add the following language to K.S.A. 79-2804: "The deed shall be filed for record, by the sheriff at the time the deed is executed, in the office of the register of deeds of the county where such real estate is situated. Any fee or charge for filing shall be collected from the successful bidder at the time of recording."

Two factors exacerbate the problems associated with delayed filing. First, until the sheriff's deed is filed, the property owner of record is the delinquent property taxpayer who has just lost their property in a foreclosure sale and has no interest in the property. Thus, any required notice to that property owner is of little value in fulfilling the statutory intent behind notifying property owners that their local government is contemplating action which will affect their property. Second, much of the property in a tax foreclosure sale is typically of the type which is affected by government action, such as platted property which has not been developed (frequently subject to special assessments) and abandoned residences and buildings (which may be condemned or abated for health and safety reasons). Thus, the need for accurate and current property ownership information is essential to carry out important municipal services and functions.

Please find attached an article that dicusses the property tax foreclosure process that was printed in the October, 1986 edition of the Kansas Government Journal.

*Senate Local Gov't
 3-21-89
 Attachment II*

The Kansas Real Property Judicial Tax Foreclosure Process: Policy and Procedure

by **Chris McKenzie**
County Administrator
and
David Corliss
Management Intern
Douglas County

Kansas local government officials are keenly aware of the importance of the ad valorem tax on real estate as a source of revenue to finance essential local services. Many of the same officials are aware that the latent threat of judicial tax foreclosure is a necessary feature of the property tax collection process. These two factors combine to make Kansas procedure and policy concerning real estate tax foreclosure actions of interest to all people gathered around the public fisc.

This article surveys Kansas law authorizing foreclosure suits for real property with delinquent taxes and offers suggestions to both the practitioner and policy-maker blessed with this responsibility. Due to the Leviathan nature of the chore, tax foreclosure suits are often the victim of postponement and procrastination. This delay, however, inevitably multiplies the number of defendants and tracts that are eventually included in foreclosure suits requiring even greater legal and abstract work and even further delay. Filing regular and timely foreclosure actions is certainly the advisable path. While many property owners with tax delinquencies are overly ambitious developers or distant heirs of the near-forgotten, unfortunately, some are fixed-income homeowners for whom the threat of foreclosure can command life-changing decisions. Notwithstanding these facts, tax foreclosure sales can be seen as serving an important public purpose — ensuring that the costs of government are

borne equitably by all those who share its benefits.

Before discussing the actual commencement of the tax suit, it is helpful to survey the statutory provisions concerning redemption of property. K.S.A. 79-2301 *et seq.* sets forth the procedure for redeeming property on which taxes have not been paid as of the twentieth day of June in each year. On the first Tuesday of September, real estate with unpaid taxes from the preceding year is "bid-off" by the county treasurer to the county for the amount of delinquent taxes. This bidding off (or lien-perfection) by the county begins the redemption period under K.S.A. 79-2401a during which the property owner may redeem the real estate by paying to the county the amount of the sale (delinquent taxes), the interest accrued and other costs. K.S.A. 79-2968 sets the interest rate for delinquent taxes at 18 percent per year. Partial redemptions of less than the total amount due are authorized by law at this stage of the process.

K.S.A. 79-2401a provides for a two-year redemption period from the date of sale (to the county), except for homestead property under Section 9 of Article 15 of the Kansas Constitution which is granted a three-year redemption period. Subsection (d) of K.S.A. 79-2401a provides that if at the expiration of the redemption period the real estate has not been redeemed, the real estate shall be disposed of by foreclosure and sale in the manner provided by K.S.A. 79-2801 *et seq.* The county also may

foreclose on property with delinquent special assessments according to this timetable (i.e., two years, except for homesteads) if the city clerk certifies the public improvements for which the special assessments were levied were requested by the landowners.

In preparing to file the actual tax foreclosure action, all of the owners or supposed owners of the real estate and persons having or claiming to have any interest in the property must be identified because K.S.A. 79-2801 requires the county to name all such individuals and corporations as defendants in the foreclosure suit. Abstract and title companies are skilled and eager to prepare an ownership and title report in this regard. With the list of owners and additional parties from the abstract company identifying the defendants, the next step is to locate them. Finding addresses for certain defendants will require little beyond the telephone directory. However, property owners (and their heirs, judgment creditors or mortgagees as the case may be) can be difficult to locate.

Before the suit is filed, the board of county commissioners must authorize the county attorney or county counselor to institute the foreclosure action in the District Court. If the tax foreclosure suit involves numerous defendants, it may be advisable to obtain a court order under K.S.A. 60-205 which will avoid the necessity of the county and the defendants having to serve every party with every pleading. Joinder of defendant parties in one lawsuit is provided for in K.S.A. 79-2802. Additionally, appointment of an attorney for defendants in the military service and as a guardian ad litem is necessary under federal and state law.

Under the provisions of the federal Bankruptcy Code (11 U.S.C. Subsection 362(a)), the filing of a bankruptcy petition automatically stays a real estate tax foreclosure action. Counties routinely receive copies of bankruptcy petitions from the bankruptcy court clerk. Debtors listed in active petitions should be checked against property owners in the foreclosure suit to avoid violating the automatic stay provisions of the code.

The tax foreclosure suit petition (which must be filed in duplicate) must contain:

- ✓ a legal description and any applicable city address for the delinquent property
 - ✓ the amount of taxes, charges, interest and penalties chargeable to the property
 - ✓ the names of the owner, supposed owner and any parties having or claiming to have an interest in the property
 - ✓ and the year the real estate was "bid-off" by the county under K.S.A. 79-302
- The petition should request that the court determine the amount charged against the property and also determine the identity of the owner and interested parties. Finally, the petition should request that the amount

be adjudged a first and prior lien upon the real estate and that the property be sold at public sale for the satisfaction of the lien and other expenses.

After the petition has been filed, payment of taxes upon the real estate included in the petition no longer occurs under the redemption provisions of K.S.A. 79-2401a; instead K.S.A. 79-2803 governs post-petition redemption. At this stage, only the owner, mortgagee or party claiming ownership can redeem the property. Redemption of property in the suit is accomplished by completing an Application to Redeem in the district court clerk's office, tendering court costs and paying the delinquent taxes and interest to date in the treasurer's office. The treasurer's office forwards a copy of the Application to Redeem and paid tax statements to the county counselor or attorney. He or she then prepares a motion for dismissal for the various causes of actions which have been redeemed. The motion and order of dismissal is then mailed to the defendants in the dismissed causes of action.

Post-petition — unlike pre-petition — redemptions must be for the full satisfaction of taxes due on the property, not just for the earlier delinquent taxes that made the property eligible for the foreclosure suit. In other words, partial redemptions are not authorized by law after the filing of the foreclosure petition.

While the service and summons of the petition follow routine Kansas Civil Procedure, it is important to note that since many property owners will not be located and therefore not personally served, service by publication will become a necessity. If service is made by publication, the notice, in addition to the requirements prescribed by the Code of Civil Procedure, must contain a description of the real estate.

Under K.S.A. 79-2803, tax foreclosure suits "shall have precedence over all other actions except criminal cases," in the District Court. Tax foreclosure suits differ from other forms of litigation in that most defendants fail to answer, and those defendants who do answer seldom set forth a defense. Since there is rarely any factual dispute, a jury trial is usually waived. Thus once all defendants have been provided notice — either by personal service or publication, a default judgment against the defendants can be sought and a journal entry of judgment prepared for approval by the court.

K.S.A. 79-2802 provides that the journal entry must particularize the judgment lien amount and the owner(s) for each piece of real estate. The judgment lien should include the statutory interest to date and the costs, charges and expenses of the suit (including abstracting expenses) and anticipated cost of the sale (such as publication and auction costs) chargeable to each piece of unredeemed property.

After judgment is rendered, the clerk of the district court issues an order of sale to the sheriff, who publishes legal notice of the sale for three consecutive weeks. The notice of sale describes the property and judgment lien and fixes a sale date not less than 30 days from the date of the first publication.

The property is sold at public auction for "the highest and best bid obtainable." Tax foreclosure sales will draw the keen attention of many neophyte real estate entrepreneurs fresh from no-money-down seminars. The level of interest expressed by potential purchasers will be determined by the number and quality of unredeemed pieces of real estate. It is certainly in the interest of the county to encourage active and monied participation in the auction. One way in which Douglas county accommodates public interest in such sales is by agreeing to send the final notice of the sale and the property included therein to any individual providing the county with a self-addressed, stamped envelope.

The successful bid may be for an amount below the judgment lien. However, K.S.A. 79-2804g prohibits the sale of foreclosure property directly (or indirectly) for an amount less than the judgment lien to any person having a statutory right to redeem the property. This proscription is enforced by K.S.A. 79-2804h which requires all purchasers to file an affidavit with the district court clerk stating that the purchase of the real estate was not made, either directly or indirectly, for any person having the statutory right to redeem. If the property sells for an amount greater than the judgment lien, the owner or creditors can obtain the excess by court order.

After the sale has been confirmed, the sheriff executes a deed to the purchaser. The sheriff's deed vests the purchaser with fee simple title to the property subject only to covenants and easements of record and taxes which have become a lien on the property since judgment was rendered. All past tax liabilities, debts and liens are removed, but the property remains liable for all future taxes (and special assessments).

The proceeds of the sale are paid by the clerk of the district court to the county treasurer, who has the responsibility under K.S.A. 79-2805 to prorate to each fund, if practicable, its proportionate interest in the entire lien. As those familiar with mill levy mathematics might presume, apportioning the tax sale proceeds for each tract is a time-consuming task.

K.S.A. 79-2804b provides that any action to open or set-aside a tax foreclosure suit or sale must be commenced within 12 months after the date of real estate was confirmed by the court. However, most litigation surrounding tax foreclosure actions concerns either the failure to sue the proper owners and additional parties or the failure to provide these individuals with

adequate legal notice of the suit. The Kansas Supreme Court has held the 12-month time limitation in K.S.A. 79-2804b is generally inapplicable against such parties who claim a due process deficiency in the tax foreclosure suit or sale. With this as background, the importance of service and legal notice to all owners, supposed owners and parties claiming a legal interest in the property is not easily exaggerated.

Kansas law governing tax foreclosure provides a straightforward, albeit time-consuming, procedure for the collection of delinquent property taxes. Both the public official and legal practitioner should appreciate the duty to all taxpayers to vigorously advance tax collection efforts. As the tax collection agent for all other taxing subdivisions, counties bear a special obligation to ensure the prompt collection of delinquent real estate taxes. The failure to utilize the tax foreclosure mechanism provided by state law only shifts a greater tax burden on those who make timely payments, thereby increasing the inequities in the property tax system.

Another Tax on Tax-Exempt Income

Congress' \$9 billion tax package to fund the costs of the toxic waste removal program (Superfund) includes \$2.5 billion to be raised over five years through the alternative corporate "book income" minimum tax provision of the new tax reform legislation. Book income includes tax-exempt interest income.

The rate would be .12 percent for Superfund financing and would be assessed against all corporations subject to the minimum tax, including banks.

Although the President has threatened to veto the legislation, it passed both houses of Congress by overwhelming margins.

Women Gubernatorial Candidates Set Record

The National Leadership Conference of Women Executives in State Government reports that a record nine women candidates have won gubernatorial primaries in 1986 statewide elections.

A record 20 women have sought governorships in 1986, and eight states will have women in this fall's general election, with Nebraska having women candidates on both Republican and Democratic tickets.

Kentucky Governor Martha Layne Collins and Vermont Governor Madeleine Kunin are currently the only incumbent women governors, with Kunin up for reelection this fall.



City of Lawrence

KANSAS

BUFORD M. WATSON, JR. CITY MANAGER

CITY COMMISSION

MAYOR

BOB SCHUMM

COMMISSIONERS

MIKE AMYX

DENNIS CONSTANCE

SANDRA K. PRAEGER

MIKE RUNDLE

CITY OFFICES

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6 EAST 6th

913-841-7722

TESTIMONY BEFORE THE
KANSAS SENATE
LOCAL GOVERNMENT COMMITTEE
MARCH 21, 1989

Mr. Chairman and Members of the Committee, my name is Kelly Arnold and I am the Legislative Liaison and Administrative Assistant to the City Manager for the City of Lawrence. I am appearing today on behalf of both the City of Lawrence and Douglas County, Kansas. I want to thank you for the opportunity to address you on House Bill No. 2077. As you are aware, this bill amends K.S.A. 79-2804 and provides that a sheriff's deed from a property tax foreclosure sale be recorded at the time the deed is executed to the successful bidder.

This bill is important to the City because it resolves the issue of when a sheriff's deed from a tax foreclosure sale must be recorded. Currently, there is no time frame in which a sheriff's deed is recorded. As a result, this can directly affect the City's notification procedure.

Let me explain this further. The City relies upon the County Clerk's records for property ownership. The County Clerk's records are as complete as possible and any change of ownership comes from the County Recorder's records. Thus, if sheriff's deeds are not recorded in a timely fashion, then the County Recorder's records are not up-to-date and the information the City receives is not accurate.

The City uses the property ownership for several important notification functions that require accurate and up-to-date property ownership information. These functions require notification of property owners, before any action may be taken. The following is a list of the functions and the number of days required for notification.

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o o Rezoning and Annexation:

The City is required to give 20 days of notification to all property owners within 200 feet of the property being rezoned or annexed.

o o Condemnation and Enforcement of Environmental Code:

By certified mail, the City is required to give at least 30 days notification and an additional 30 days before a public hearing on the case.

o o Special Assessments:

The City uses the County's tax rolls to charge for special assessments.

As you can see, there are several notification functions that require accurate property ownership records.

In order to gain further perspective on the timeliness of recording of sheriff's deeds, I analyzed the last foreclosure sale in Douglas County. This sale took place June 6, 1987 and involved 45 delinquent properties. After the sale was complete it took two weeks for the sheriff's office to execute the deed. After the execution was completed, the sheriff's office then notified all successful bidders that their deed was ready to be picked up. Only twenty properties were recorded within a week after the Sheriff's notification. Ten more were recorded within two months. Five more properties were recorded within six months. It took over a year for eight additional properties to be recorded. What happened to the final two properties? These have yet to be filed and still show former owner as owner of record.

During this analysis, I discovered a good case in point on how the inaccuracy of property records can affect City functions. One of the delinquent properties that took over a year to record was involved in an environmental code infraction with weeds and a small, condemned house. The City proceeded to notify the owner of record of the problem, but no response was received. Notification efforts continued, while the City mowed the weeds

on the property and assessed the \$77 cost to the property. Finally, the City was set to contract out the demolition of the dilapidated structure, the new owner notified the City of the purchase. The City then had to begin the notification procedure again. After nearly six months of notification the house was demolished, because the new owner consented that he did not want the house. The \$855 bill for this demolition was also assessed to the property taxes, but there has been no payment.

We believe that this bill, if enacted, will clarify when and how the recording of delinquent tax sales will be completed. The recording of the sheriff's deed immediately will insure accurate property records. This will minimize future major problems in notifying property owners involved in delinquent property tax sales. Thank you for your time and opportunity to speak to you on this important bill.

Senate L.G.
3-21-89
III-3

March 17, 1989

Senator Don Montgomery
Kansas State Senate
State Capitol
Topeka, KS 66612

Dear Senator Montgomery:

As Chairman of the Legislative Committee for the Register of Deeds Association, I would like to enlist your support for favorable passage of **H.B. 2077** out of the Local Government Committee.

The timely filing of Sheriff's deeds serves notice to the public immediately following the sale. We have found that recording deeds at the time of execution as proposed in H.B. 2077, prevents possible loss of deeds and allows the proper record owner to be current. The recording of the deed will also facilitate the generating of a correct tax statement.

Some counties who have experienced both ways of handling these deeds have found that recording the deeds upon execution was far superior to having the landowner record the deed at his convenience.

Our association would appreciate your consideration and support on H.B. 2077.

Sincerely yours,



Linda Fincham,
Register of Deeds

LKF:hp

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Attachment IV