

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

July 20, 2012

Honorable Stacey Pickering
State Auditor
Post Office Box 956
Jackson MS 39205

Re: Fee for Examining Records to Ascertain Title

Dear Mr. Pickering:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and reply. You ask:

QUESTION

Section 27-43-1 provides "The clerk of the chancery court shall, within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption with respect to the land sold... be required to issue notice to the record owner of the land sold as of one hundred eighty (180) days prior to the expiration of the time of redemption". Section 27-43-3 allows the clerk to earn a fifty dollar (\$50) fee for examining the records to ascertain the record owner of said property, to be paid at the time of redemption of taxes as part of the cost against the tax-sale purchaser.

To enable our office to properly audit this fee we have two questions. May the chancery clerk perform the work required to ascertain the owner of the property in question before the 180 day time period in Section 27-43-1 begins? If so, may the chancery clerk charge the \$50 fee authorized in Section 27-43-3 prior to the beginning of the 180 day time period in Section 27-43-1?

RESPONSE

Yes, the chancery clerk may perform work required to ascertain the record property owner before the 180 day time period; in addition, the clerk may charge the fee whenever the property is redeemed, whether that be before or after the start of the 180 day time period.

ANALYSIS

As you point out in your letter, the chancery clerk is required by statute to send notice to the "record owner of the land sold as of one hundred eighty (180) days prior to the expiration of the time of redemption." Miss. Code Ann. Section 27-43-1. The following section states in pertinent part:

The clerk shall issue the notice [required by 27-43-1] to the sheriff of the county of the reputed owner's residence, if he be a resident of the State of Mississippi, and the sheriff shall be required to serve personal notice as summons issued from the courts are served, and make his return to the chancery clerk issuing same. The clerk shall also mail a copy of same to the reputed owner at his usual street address, if same can be ascertained after diligent search and inquiry, or to his post office address if only that can be ascertained, and he shall note such action on the tax sales record. The clerk shall also be required to publish the name and address of the reputed owner of the property and the legal description of such property in a public newspaper of the county

* * *

Notice by mail shall be by registered or certified mail. In the event the notice by mail is returned undelivered and the personal notice as hereinabove required to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post office address. If the reputed owner's street or post office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as hereinabove set out. If personal notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sales record. If the clerk is still unable to ascertain the reputed owner's street or post office address after making search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said

affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sale record.

For examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars (\$50.00); for issuing the notice the clerk shall be allowed a fee of Two Dollars (\$2.00) and, for mailing same and noting such action on the tax sales record, a fee of One Dollar (\$1.00); and for serving the notice, the sheriff shall be allowed a fee of Four Dollars (\$4.00). For issuing a second notice, the clerk shall be allowed a fee of Five Dollars (\$5.00) and, for mailing same and noting such action on the tax sales record, a fee of Two Dollars and Fifty Cents (\$2.50), and for serving the second notice, the sheriff shall be allowed a fee of Four Dollars (\$4.00). The clerk shall also be allowed the actual cost of publication. Said fees and cost shall be taxed against the owner of said land if the same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser. The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff have complied with the duties herein prescribed for them.

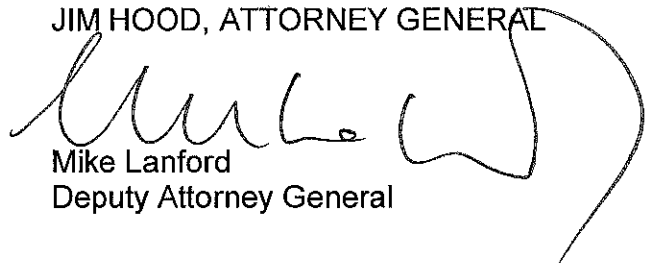
Miss. Code Ann. Section 27-43-3 (emphasis added). **OFFICIAL OPINION**

The clerk's right to charge the \$50 fee accrues, according to Section 27-43-3, upon redemption. The statute does not consider when the redemption occurs. The statutory scheme allows for redemption anytime within 2 years of the tax sale. Miss. Code Ann. Section 27-45-3. Further, the statute does not state when the clerk must perform the work necessary to ascertain the record property owner. It is our opinion that a clerk may perform work to ascertain who is or will be the record owner as of the 180 day period prior to the actual commencement of such period. In addition, it is our opinion that the clerk is entitled to the fee whenever the land is redeemed, whether before or after the beginning of the 180 day period. Of course, the clerk or his deputy must actually perform the task of examining the records to ascertain the record property owner, in order to earn the fee.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Mike Lanford
Deputy Attorney General