

Official Opinion No. 82-54, Payment of Taxes on Property Sold By Bankrupt Railroad

November 22, 1982

Mr. Rodney J. Steele  
State's Attorney  
Kingsbury County  
Kingsbury County Courthouse  
DeSmet, South Dakota 57231

Official Opinion No. 82-54

**Payment of Taxes on Property Sold By Bankrupt Railroad**

Dear Mr. Steele:

You have requested an official opinion from this office based on the following factual situation:

**FACTS:**

On the advice of the Attorney General, you counseled the Kingsbury County Register of Deeds to refrain from recording any deeds or other instruments of transfer from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company until all operating taxes assessable in the county have been paid. The Railroad Trustee informs you that you may be submitting the Register of Deeds to the risk of a contempt citation from the Bankruptcy Court.

Based on this situation, you have asked the following question:

**QUESTION:**

May County Registers of Deed or Treasurers refuse to file and record documents of title or to certify plats conveying real property from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company to third party purchasers for value prior to the payment of all outstanding, delinquent and unpaid real property taxes which are due and owing on either locally or centrally assessed railroad property?

By its Petition filed December 19, 1977, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter 'Debtor Railroad'), under the provisions of 11 U.S.C. 205 (nee 11 U.S.C. 1161 et seq.) of the Bankruptcy Act (11 U.S.C. 101 et seq.) submitted itself to the jurisdiction of the United States District Court for the Northern District of Illinois Eastern Division (hereinafter 'Reorganization Court') for Railroad Reorganization (Bankruptcy No. 77B8999). In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, United States Court of Appeals for the Seventh Circuit, Opinion filed September 3, 1982.

Under federal Law, this Court has sole jurisdiction over the Debtor Railroad during reorganization proceedings and may issue such Orders as it finds appropriate for the financial restructuring of the Debtor Railroad.

By its Order No. 1, issued December 20, 1977, the Court, in part, decreed that:

1. The Trustee of the Debtor Railroad may sell railroad real property not needed for operation of the Debtor Railroad; and

2. 'The debtor is authorized in its discretion, from time to time until further Order of this Court . . . to pay all or any of the following in whole or in part . . . :'

B. 'Taxes, assessments and other governmental charges now due or hereafter due upon or measured by, the properties, . . . of the debtor'; and

3. 'This Court reserves full right and jurisdiction to make from time to time such Order as the Court shall deem proper . . .'

By its Order No. 19, issued March 6, 1978, which Order is still in full force and effect as of this date, the Court further delineated the general authority of the Debtor Railroad's Trustee to sell real property not needed for operation of the debtor. Ordering paragraphs 1-3, inclusive, speak directly to the issue of secured creditors and clearly directs that to avoid any preferential treatment, any secured interest in real property which is sold 'shall be transferred from such property to the net proceeds of sale' (Ordering paragraph no. 2) which shall be deposited in trust at the Continental Illinois National Bank and Trust Company of Chicago (Ordering paragraph no. 3).

The legal precepts regarding the sale of a bankrupt's real property and the transfer of existing liens to the proceeds of sale set forth by the United States Supreme Court in Van Huffel v. Harkelrode, 284 U.S. 225 (1931), the landmark case which has been cited as precedent in numerous subsequent cases, still controls. In Van Huffel, the Court held:

'The lower Federal Courts have consistently held that the Bankruptcy Court possesses the power, stating that it must be implied from the general equity powers of the Court and the duty imposed by Section 2 of the Bankruptcy Act to collect, reduce to money and distribute the estates of the bankrupts.'

'To transfer the lien from the property to the proceeds of its sale is the exercise of a lesser power; and legislation conferring it is obviously constitutional. Realization upon the lien created by the state law must yield to the requirements of the Bankruptcy Administration.'

'No case has been found in which the power to sell free from the lien from state taxes was denied.'

Based on the Supreme Court's ruling in Van Huffel, it appears that Order No. 19, issued March 6, 1978, by the Reorganization Court is a lawful Order which supercedes state law regarding the transfer of real property and the payment of delinquent or outstanding real property taxes.

All South Dakota counties having Debtor Railroad real property within their boundaries are creditors of its estate (SDCL Chapter 10-17). As such, these counties have previously filed claims with the Reorganization Court and are entitled to recover a pro rata share of all funds made available by the Court to settle their claims upon approval of the final reorganization plan. Under that plan, locally and centrally assessed real property taxes owed by the Debtor Railroad may ultimately be recovered in full.

Without further Order of the Reorganization Court, any attempt to recover outstanding and delinquent real estate taxes from the Debtor Railroad or a third party purchaser for value of railroad real property may constitute preferential treatment of a creditor under the Bankruptcy Act. Creditors receiving such treatment, or the elected official for the creditor who demands such treatment, may be cited for violation of federal law and may be subject to potential incarceration for failure to obey a lawful court order.

Based upon the foregoing facts, it is my opinion that:

A. County Registers of Deed and Treasurers may not refuse to file and record documents of title or refuse to certify plats conveying real property from the Debtor Railroad to a third party purchaser for value if the transaction sale price is less than One Hundred Thousand Dollars (\$100,000.00) so long as Order No. 19, issued by the Reorganization Court on March 6, 1978, remains in full force and effect; and

B. The ability of County Registers of Deed and Treasurers to refuse to file and record documents of title or to refuse to certify plats conveying real property from the Debtor Railroad to a third party purchaser for value for transactions involving a sale price in excess of \$100,000.00 will depend upon the specific order of the Reorganization Court authorizing the sale.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General