



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-108401

April 7, 1952

The Honorable

The Secretary of Agriculture

My dear Mr. Secretary:

Reference is made to letter of March 6, 1952, from the Acting Secretary of Agriculture, requesting to be advised whether under the facts and circumstances described therein the Rural Electrification Administration now may pay certain delinquent taxes on property sold by the Administration to the Ocracoke Electric Membership Corporation.

It is explained that the taxes involved are for the years 1940, 1941, 1943 and 1944, in the amount of \$1,525.18, and accrued against the property in question when it was owned by the Ocracoke Light and Power Company. The latter Company entered into a loan contract with the United States as of June 19, 1937, and pursuant to such contract and an amendment thereto, issued its notes to the United States in the amount of \$46,000 and, as security therefor, executed a mortgage to the United States covering all the property of the Company. Due to the Company's inability to continue operations and to meet its payments under the loan, the Government, acting through the Administrator of the Rural Electrification Administration, exercised the power of sale contained in the mortgage and took title to the property on December 28, 1944.

B-108401

Subsequently, under a deed and bill of sale, dated February 21, 1945, the Government sold and quitclaimed to the Ocracoke Electric Membership Corporation all its right, title, and interest in and to the properties formerly owned by the Ocracoke Light and Power Company. As consideration for such sale, the Administration accepted the note of the Corporation in the amount of \$17,450 and at the same time, loaned to the Corporation the sum of \$38,550. In 1947 an additional loan was made in the amount of \$2,800 and it is reported that the notes evidencing such loans are outstanding. It is stated that Hyde County, North Carolina, has instituted tax proceedings against the Corporation relative to the unpaid taxes described above and the Corporation has requested your Administration to pay the taxes on the basis of the provisions contained in section 105-408, North Carolina General Statutes, which provide in pertinent part, as follows:

" * * * And whenever any real estate shall be sold by any person under any power of sale conferred upon him by any deed, will, power of attorney, mortgage, deed of trust, or assignment for the benefit of creditors, the person making such sale must pay out of the proceeds of sale all taxes then assessed upon such real estate and such sums as shall be necessary to redeem the land, if it has been sold for taxes and such redemption is practicable. This section shall apply both to taxes and special assessments for paving, drainage, or other improvements; provided, that the person making such sale, whether under order of court or in the exercise of a power, shall be required, in cases where special assessments are payable in installments, to pay only such installments of special assessments as have become due at the date of such sale. The failure to comply with this section and pay such taxes or assessments shall not vacate or affect the lien of such taxes or assessments, but such lien shall be discharged only to the extent payment is actually made."

It is explained further that the existence of a lien for unpaid property taxes was known at the time of foreclosure and was the subject of administrative consideration during the two-month period of Government ownership but, in view of the immunity of Government-owned property from enforcement of the tax lien, no action was taken to discharge the lien at the time of foreclosure and the taxes remained unpaid at the time of the sale of the property to the Corporation. It is stated, however, that in arriving at the consideration for the sale to the Corporation it does not appear that any deduction was made from the sale price because of the tax lien on the property.

It was held by the United States Supreme Court in United States v. Alabama, 313 U.S. 274, in effect, that, while a prior existing tax lien on land purchased by the United States could not be enforced against the United States as long as title remained in the United States, the lien could be enforced against the property when it was sold by the United States. Such a lien, therefore, has the effect of reducing the market value of the property involved and it has been held by this Office that, if funds are available therefor, such taxes may be paid by the United States in order to remove the cloud from the title and thereby increase its marketability. It is provided in section 7 of the Rural Electrification Act of 1936, 7 U.S. Code 907, that--

"The Administrator is authorized and empowered to bid for and purchase at any foreclosure or other sale, or otherwise to acquire, property pledged or mortgaged to secure any loan made pursuant to this Act; to pay the purchase price and any costs and expenses incurred in connection therewith from the sums authorized in section 3 of this Act; to accept title to any property so purchased or acquired

B-108401

in the name of the United States of America; to operate or lease such property for such period as may be deemed necessary or advisable to protect the investment therein, but not to exceed five years after the acquisition thereof; and to sell such property so purchased or acquired, upon such terms and for such consideration as the Administrator shall determine to be reasonable."

Consequently, there can be no question but that the tax lien properly could have been discharged by the United States any time during the two-month period that it held the property.

In a letter dated February 29, 1952, addressed to this Office by a representative of the Ocracoke Electric Membership Corporation, it was stated that at the time the purchase price was established, the Corporation believed that the United States would comply with the statute of North Carolina hereinabove quoted and pay the delinquent taxes. That statement appears to be substantiated by the statement contained in the letter from the Acting Secretary of Agriculture that no deduction appeared to have been made from the sales price of the property on account of any liability for taxes for the years in question.

In view thereof it appears that the amount of such taxes properly may be viewed as having been included in the consideration received by the United States from the purchaser and you are advised that no objection will be made by this Office if such tax lien now be discharged by the Administration, or, if discharged by the Corporation, a credit for such amount be given on any installments which presently may be due on the outstanding notes of the Corporation held by the Government.

Sincerely yours,

Lindsay C. Warren

~~Acting~~ Comptroller General
of the United States