

Opinion No. 64-15

R-123

June 12, 1964

REQUESTED BY: HONORABLE NORMAN E. GREEN
Pima County Attorney

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS:

1. Where a public body acquires real property by virtue of eminent domain proceedings at which point does the property become exempt for ad valorem taxation ?

2. Is the question the same where the public body taxes a taxpayer's land without proceedings and the taxpayer files an action in inverse eminent domain ?

3. Where the public body acquires only a portion of a taxpayer's property in an eminent domain proceeding, what is the validity of the assessment which was originally made on the entire property ?

ANSWERS:

1. See body of opinion.

2. See body of opinion.

3. See body of opinion.

There are certain primary conditions which we must review before answering any of the questions. Under A.R.S. §12-1126 the property vests in the plaintiff, i.e., the public body condemning the land, upon the filing of a copy of final order of condemnation in the office of the county recorder. Under the case of Territory v. Ferrin, 9 Ariz. 316, 83 Pac. 361 (1905) if a public body acquires land prior to the completion of the taxing process the land is exempt from taxes for that year. Inasmuch as we have no statutes in Arizona relative to the proration of taxes, it follows that if the land is acquired after the completion of the taxing process there is no exemption. The court also stated that the taxing process is complete when the rate of taxes is fixed and the amount determined and levied. This occurs on the third Monday of August of each year. Even though the assessment is finished by the first of May, the tax rate to be determined by the State Tax Commission for state purposes is not complete until the second Monday in August. A.R.S. §42-145. Only when this is completed may the county

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(which for the first time has had the final decision on the total valuation) fix and assess its own taxes. This is done subsequent to the state determination and prior to the third Monday in August in each year. A.R.S. §42-304. The actual date can be prior to the third Monday, but it will never be more than a week prior to that date and is a matter of record in any given year.

To return to the question, we have no specific cases in Arizona and the assistance which we may gain from the decisions in other states is conditioned somewhat upon their statutes and the similarity of their law to our law. However, the leading authority on eminent domain can be paraphrased as follows. Taxes which become a lien upon the real property prior to the date the title vested in the condemnor is a lien upon the property to be paid to the taxing authority from the award. 4 Nichols, Eminent Domain, Section 14,248, page 683. This is also the rule in federal cases. See the annotation of 45 A.L.R. 2d 522, Section 22, page 562. Inasmuch as up to 90% of the costs of interstate highway construction, the most active area in condemnation, are paid from federal funds and up to 75% of the costs on city or county cases are also paid from federal funds, we feel assured that the following of the federal rule is the best insofar as Arizona is concerned.

It is true that some jurisdictions have followed a different rule, notably New York, but the A.L.R. annotation notes them to be in the minority. We also realize the occasionally a proration of the taxes would appear to be the more equitable solution, but this is a legislative matter. For example, the State of Illinois in 1961 by specific statute enacted a proration provision. See, Public Building Commission v. Continental Illinois National Bank, 195 N.E. 2d 192 (Ill. 1963).*

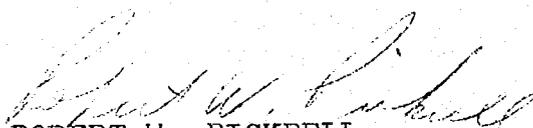
In answer to your second question, we feel there should be no difference in the answer. The public body even though it occupies the land is not the vested owner until the provisions of

* We are aware of the decision in California entitled People v. Fink, 37 Cal. Repr. 724 (D.C. App., March 24, 1964). However, this holding is contrary to a number of federal cases on the subject and to the implication of State v. Helm, 86 Ariz. 275, 345 P.2d 202. We therefore regard it as not controlling.

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A.R.S. §12-1126 are complied with. Real property taxes run with the land and are not personal and they cannot be abated or derogated against the interests of county, city, school districts or other taxing bodies without clear statutory authority.

In answer to your third question, there is a possibility that a taxpayer might avail himself of the provisions of A.R.S. §§ 42-241 to 42-243. I am assuming the following factual situation. That the condemning authority has condemned a portion of a taxpayer's land, and that the order of condemnation has been filed with the recording sometime prior to the fixing of the tax rate. It is obvious then that a portion of the land is tax exempt and a portion properly taxable. But inasmuch as the assessor was required to go by the record ownership during his assessment process, he assessed the total property to the taxpayer. I would see no legal reason why the taxpayer could not use the appeal provisions in A.R.S. §§42-241 through 42-243 to call to the attention of the supervisors a substantial factual change and to ask for an adjustment accordingly. If the board failed to so act, I believe an appeal to the courts under A.R.S. §42-245 might well be justified. But it is our belief that the assessor has no authority to change the assessment rolls once he has certified them to the board of supervisors, in accordance with the provisions of A.R.S. §42-239.


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The Attorney General

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