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Opinion No. 81-405—November 9, 1981

**SUBJECT: THE SUBDIVISION MAP ACT AS IT RELATES TO TAX-DEEDED PARCELS—**The Subdivision Map Act and subdivision ordinances enacted pursuant thereto do not apply to the tax collector's sale of a portion of a tax-deeded parcel pursuant to Rev & Tax Code § 3691. When the tax collector sells a portion of a tax-deeded parcel at a tax sale, the purchaser is entitled to a certificate of compliance as to such portion as provided in Gov Code § 66499.35. A board of supervisors in a general law county has no legislative authority to require the tax collector to comply with the Subdivision Map Act and the county subdivision ordi-

nance enacted pursuant thereto in the tax sales of portions of a tax-deeded parcel by means of a county ordinance imposing such a duty on the tax collector.

**Requested by:** COUNTY COUNSEL, MENDOCINO COUNTY

**Opinion by:** GEORGE DEUKMEJIAN, Attorney General

Robert D. Milam, Deputy

The Honorable John A. Drummond, County Counsel, County of Mendocino, has requested an opinion on the following questions:

1. Do the Subdivision Map Act and subdivision ordinances enacted pursuant thereto apply to the sale of a portion of a tax-deeded parcel pursuant to Revenue and Taxation Code section 3691 *et seq.*?
2. Is the purchaser of a portion of a tax-deeded parcel entitled to a certificate of compliance under Government Code section 66499.35?
3. Can the county board of supervisors of a general law county, by ordinance, require the county tax collector to comply with the state Subdivision Map Act and the county subdivision ordinance enacted pursuant thereto?

#### CONCLUSIONS

1. The Subdivision Map Act and subdivision ordinances enacted pursuant thereto do not apply to the tax collector's sale of a portion of a tax-deeded parcel pursuant to Revenue and Taxation Code section 3691.
2. When the tax collector sells a portion of a tax-deeded parcel at a tax sale the purchaser is entitled to a certificate of compliance as to such portion as provided in Government Code section 66499.35.
3. A board of supervisors in a general law county has no legislative authority to require the tax collector to comply with the Subdivision Map Act and the county subdivision ordinance enacted pursuant thereto in the tax sales of portions of a tax-deeded parcel by means of a county ordinance imposing such a duty on the tax collector.

#### ANALYSIS

In California every tax on real property is a lien against the real property assessed. (Rev. & Tax. Code, § 2187.)<sup>1</sup> When a property owner has defaulted in the payment of taxes, delinquent penalties are imposed (§§ 2617, 2618, 2621) and if the delinquency persists the property is sold to the state by operation of law (§§ 126, 3436). This begins the statutory time period in which payment of delinquent taxes must be made before title passes to the state. At the end of a five year period, if the defaulting owner has not redeemed his property by paying the delinquency (see §§ 4101, 4102) and after statutory

<sup>1</sup>All unidentified section references are to the Revenue and Taxation Code.

notice (§§ 3361-3366), the property is deeded to the state (§§ 127,3511). The deed to the state conveys absolute title free of all encumbrances except for those specified in section 3520.

Once the property is deeded to the state, it is classified for public use, for private ownership, or wasteland to be rehabilitated (§ 35410. Property classified for private ownership may be sold to the highest bidder and the county tax collector is designated as the officer to conduct the sale (§ 3691). In making the sale, the tax collector must notify the board of supervisors of a proposed sale (§ 3698) and upon receipt of the notice the board of supervisors shall either approve or disapprove of the proposed sale (§ 3699). After the approval of the board of supervisors and authorization in writing from the state controller (§ 3700), the tax collector publishes notice of sale (§ 3702) and proceeds to make the sale to the highest bidder (§ 3706). The property may be redeemed by the defaulting property owner until the first bid at a public auction (§ 3706), but even after the first bid the defaulting taxpayer may participate in the auction (§ 3691).

Section 3691 provides:

*“The tax collector may sell for lawful money of the United States or negotiable paper as the tax collector in his discretion may elect all or any portion of tax-deeded property without regard to the boundaries of the parcels in which it was deeded to the State, as provided in this chapter, unless by other provisions of law such tax-deeded property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to or interest in such property, may purchase at said sale.*

*“When a part of a tax-deeded parcel is sold the balance continues subject to redemption, if the right of redemption has not been terminated, and shall be separately valued for the purpose of redemption in the manner provided by Chapter 2, Part 7, Division 1 of this code, except that no application need be made.” (Emphasis added.)*

The Subdivision Map Act (Gov. Code, § 66410 *et seq.*; hereafter “Map Act”) requires that, before property is subdivided for sale, lease, or financing (Gov. Code, § 66424), a subdivision map must be prepared by the subdivider and be approved by the governing body of the city or county in which the land is located. The purposes of the legislation are to: (1) promote orderly community development, (2) insure proper improvement of the areas within the subdivision that are dedicated for public purposes by the subdivider, and (3) prevent fraud and exploitation by the subdivider. (*Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191, 195-196; *Pratt v. Adams* (1964) 229 Cal. App. 2d 602, 606; 62 Ops. Cal. Atty. Gen. 136, 137 (1979); 56 Ops. Cal. Atty. Gen. 496, 497 (1973).)

Section 3691 authorizes the tax collector to sell “all or any part” of a tax-deeded parcel. However, section 3691 also imposes a limitation on the tax collector’s power to sell when by “... other provisions of law such tax-deeded property is *not subject to sale.*” (Emphasis added.) It may be argued that the Map Act is such other provision of law that prevents the sale of tax-deeded property. In construing the meaning of this lim-

itation we apply the controlling rule of statutory construction, that one is required to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal. 3d 692, 698.) In order to determine this intent, the courts turn first to the words of the statute itself. (*Moyer v. Workmen's Compensation Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Other rules of construction will not be applicable when the language of a statute gives a clear indication of the legislative intent. (*Wallace v. Department of Motor Vehicles* (1970) 12 Cal. App. 3d 356, 360.) Where the provisions of a statute are susceptible to two or more reasonable interpretations, the interpretation that will harmonize rather than conflict with other provisions should be adopted. (*People v. Kuhn* (1963) 216 Cal. App. 2d 695, 698.)

Section 3691, in essence, is a general legislative authorization for the tax collector to sell tax-deeded property. It gives the tax collector discretion to sell tax-deeded property and empowers the tax collector to make such sales. The phrase "not subject to sale" referring to "such tax-deeded property," in our opinion, describes a limitation on the tax collector's power to sell. We believe that the Legislature intended that the phrase "other provisions of law" in this respect refer only to those provisions in which the Legislature has expressly withheld the tax-deeded property from sale by the tax collector. For example, such a nexpress limitation appears in section 3546, which provides that tax-deeded property "which has been classified as waste land is *not subject to sale* to private owners." (Emphasis added.) The Map Act does not prohibit the sale of property in the sense the Legislature intended in section 3691. We conclude that the Map Act is not one of the "other provisions of law" referred to in section 3691.

Governmental officials, such as the county tax collector, are neither expressly included nor excluded from the provisions of the Map Act.<sup>2</sup> A subdivider covered by the Map Act is defined as any "person, firm, corporation, partnership, or association." (Gov. Code, § 66423.) The first question concerns the duty of the tax collector, in selling property under section 3691 *et seq.*, to comply with the provisions of the Map Act.

We believe the answer to this question is provided by the case of *Morris v. Reclamation District No. 108* (1941) 17 Cal. 2d 43. This case concerned a tract of land on which bonds had been issued for construction of a public project. The payment on the bond was in default and consequently the property was subject to sale by the county treasurer as trustee of the reclamation district. The treasurer split the property into several parcels and reapportioned the assessment to the individual parcels in order to sell the property. One of the arguments raised was that the splitting of the property was void because the Map Act was not complied with, even though a map was filed. The court held that the section under consideration (Pol. Code, § 3640) did not require the filing of a subdivision map by any public agency or public officer "where such subdivision is authorized by law." (*Id.*, at p. 53.)

<sup>2</sup> Another legislative scheme applicable to subdivision of real property and the sale of subdivided parcels is the Subdivided Lands Act (Bus. & Prof. Code, § 11000 *et seq.*). This act is administered by the State Real Estate Commissioner who is required to issue a public report on subdivisions covered by the law. Statutes 1980, chapter 1336, added section 11010.6 to the Business and Professions Code to expressly exclude public agencies from the coverage of the Subdivided Lands Act.

It is clear that the duties of the county treasurer as trustee in the *Morris* case and the tax collector (for the purposes of tax-deeded property) are virtually identical. As the court described the trustee's duties:

"The duty of the trustee is to sell the lands, if possible. If the parcel is so large that it cannot be sold, it is imperative that it be cut up in smaller parcels that are readily saleable." (*Morris v. Reclamation District No. 108, supra*, 17 Cal. 2d at p. 52.)

In the *Morris* case the law construed by the court defined a "Subdivider" subject to the Map Act in much the same way that the statute today does. Since the duties of the trustee in the *Morris* case and tax collector in the question before us are virtually identical and because the definition of those subject to the Map Act was the same in *Morris* as it is today, we are constrained to follow the holding of the California Supreme Court in the *Morris* case and conclude that the county tax collector is not bound by the Subdivision Map Act when selling tax-deeded property.

This same conclusion applies to the county land division ordinance which was adopted pursuant to the Map Act. In implementing the Map Act a local agency may not provide for conditions which conflict with the Map Act. (*Kelber v. City of Upland* (1957) 155 Cal. App. 2d 631, 637, disapproved on another point in *The Pines v. City of Santa Monica* (1981) 29 Cal. 3d 656, 664.) Since under the Map Act the definition of "subdivider" does not include the county tax collector, the county ordinance enacted pursuant to the Map Act cannot encompass the tax collector.

The second question is whether the buyer of a portion of a tax-deeded parcel is entitled to a certificate of compliance under section 66499.35 of the Government Code. This section authorizes any owner or vendee of real property to request the local agency to make a determination whether the property complies with the Map Act and of local ordinances enacted pursuant thereto. If the determination is that the property complies with the Map Act a certificate of compliance must be issued. If the property does not meet the requirements of the Map Act the local agency may impose conditions that would have been applicable to the division of property at the time the applicant acquired his interest therein. We have already concluded that the tax sale of a portion of a tax-deeded parcel by the tax collector does not violate the Map Act or the county subdivision ordinance. The division of the tax-deeded parcel into portions for purposes of the tax sale is not governed by the Map Act or the subdivision ordinance, so no violation of the subdivision laws results from such division. Thus the buyer of the portion of the tax-deeded parcel at the tax sale is entitled to the same kind of Government Code section 66499.35 certificate for the portion purchased as would be issued for the whole tax-deeded parcel.<sup>3</sup>

The last question is whether the board of supervisors may enact an ordinance requiring the county tax collector to comply with the state Subdivision Map Act and the

<sup>3</sup>The fact that the tax collector need not comply with the Map Act does not insulate a buyer from complying with zoning requirements, requirements for a building permit, or other lawful restrictions on the use of the land.