

# The Mississippi Legislature



## A Limited Review of the Management of Tax-Forfeited Lands by the Division of Public Lands, Office of the Secretary of State

November 16, 1992

The Office of the Secretary of State manages and sells land forfeited to the state for non-payment of local property taxes. For those sixty-nine counties for which the Secretary of State has current computer records, the number of land tracts available for sale totals 7,776. Although the office advertises individual parcels and maintains lists of such properties accessible to the public, the office does not aggressively market the lands; does not have a formal procedure to define how long the office works with delinquent owners before offering lands to the highest bidders; and, while offering certain "blighted" properties at a reduced price, the office has not defined the term "blighted."

Counties have been lax in reporting market values and record owners of such lands, and no state agency regularly inspects these lands for trespass or waste. While many persons have disputed the revenue-generating capacity of tax-forfeited land sales, the Secretary of State estimates that approximately \$500,000 per year (up to a cumulative total of \$5 million) in new revenue could be generated, based on parcel values of \$13 million.

The Secretary of State should strengthen sales and management of public lands and consider privatizing the function to a real estate firm, or the Legislature could, by statute, allow lands to be sold or managed by the counties.

## The PEER Committee

## **PEER: THE MISSISSIPPI LEGISLATURE'S OVERSIGHT AGENCY**

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

An extension of the Mississippi Legislature's constitutional prerogative to conduct examinations and investigations, PEER is authorized by law to review any entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

As an integral part of the Legislature, PEER provides a variety of services, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**A Limited Review of the Management of Tax-Forfeited Lands by  
the Division of Public Lands, Office of the Secretary of State**

**November 16, 1992**

**The PEER Committee  
Mississippi Legislature**

The Mississippi Legislature  
**Joint Committee on Performance Evaluation and Expenditure Review**

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November 16, 1992

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At its meeting of November 16, 1992, the PEER Committee authorized release of the report entitled **A Limited Review of the Management of Tax-Forfeited Lands by the Division of Public Lands, Office of the Secretary of State.**

A handwritten signature in cursive script that reads "Bill Canon".

Senator Bill Canon, Chairman

**This report does not recommend increased  
funding or additional staff.**

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# A Limited Review of the Management of Tax-forfeited Lands by the Division of Public Lands, Office of the Secretary of State

November 16, 1992

## *Executive Summary*

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### **Introduction**

MISS. CODE ANN. Section 7-11-11 makes the Secretary of State responsible for tax-forfeited lands after the redemption period has elapsed. In response to a citizen's complaint, the PEER Committee reviewed the management of the state's tax-forfeited lands by the Public Lands Division of the Office of the Secretary of State. PEER sought to determine whether the Secretary of State manages this function in accordance with law and makes continuous and concerted efforts to promote and market tax-forfeited lands.

**Overview:** *Although the Secretary of State's Office complies with state law regarding management of tax-forfeited lands, current procedural and statutory weaknesses limit the marketing and sale of these lands.*

The complaint which precipitated this review contended that the Secretary of State's Office does not obtain the maximum possible amounts for tax-forfeited property, thus depriving the state of an important revenue source. Further, the complaint alleged that some tax-forfeited property was not being offered to the public because the Attorney General's Office was improperly removing property from the lists of property available to the public for sale (a legal practice known as "striking off"). The complaint also alleged that the Secretary of State's Office does not provide sufficient protection against waste and trespass for tax-forfeited lands.

PEER found weaknesses in the Public Lands Division, such as a limited statewide system for advertising tax-forfeited lands and lack of a procedures addressing the amount of time the Secretary of State must wait to sell land to persons who also own interest in that land. Also, the Public Lands Division has not defined the term "blighted" for purposes of property sales.

PEER puts forth two policy options which address the weaknesses noted in this report. The first option would call for the transfer of tax-forfeited lands management and sales to the individual counties. The second option calls for retaining the function in the Secretary of State's Office, with the following technical corrections:

- amend state law to require that county officials annually provide to the Secretary of State information regarding property stricken—specifically, its value and owner of record; and,
- require the Department of Wildlife, Fisheries and Parks to investigate and report to the Secretary of State instances in which trespasses have occurred on state-owned tax-forfeited lands.

### **Findings and Conclusions**

#### *Weaknesses in Procedures*

**The Public Lands Division does not advertise sales of tax-forfeited lands statewide.**

While the Public Lands Division has considerable amounts of tax-forfeited property in its inventory (7,776 tracts in sixty-nine counties), it has advertised in the media fifteen times since 1990 for selected counties. While advertising is no guarantee of success in sales, it can help the seller inform potential customers of the availability of tax-forfeited lands. Advertising can also expand the market for such lands beyond the land speculators who customarily know and understand the workings of tax forfeiture sales. The division's limited advertising in the past could be attributed to the lack of an easily accessible database for tax-forfeited property. At a cost of approximately \$736,000, the Secretary of State's Office is implementing a computerized tax-forfeited property database, which will allow for statewide advertising. The database is scheduled to be fully operational on December 31, 1992.

**The Public Lands Division lacks a procedure addressing the amount of time the Secretary of State must wait after the initial thirty-day period to sell land to persons who also own interest in that land.**

When a potential purchaser files an application on property, the division is not under any legal obligation to sell to the person who makes the application. Therefore, the office can continue to work with former owners of record who may in the future be able to get their property back. Returning property to former owners of record can be a worthy goal, but agency procedures should address the issue of the length of this process when there are potential buyers ready to purchase the property. The Public Lands Division should devise and adhere to a formal practice which clearly defines how long the division will work with former interest holders before offering the property to other applicants.

**The Public Lands Division has not defined "blighted property" for the purpose of sales.**

At present, the Secretary of State sells certain "blighted" properties for 25% of value. While state law does not prohibit such sales, the Public Lands Division has not defined "blighted property," which could confuse potential purchasers as to the price of certain lands. Such a problem could be eliminated if the Secretary of State devised a rolling pricing scheme to discount certain properties if such do not sell within five years of maturing to the state. Lands not sold within five years could be automatically discounted regardless of whether they fit within any reasonable conception of "blighted."

#### ***Weaknesses in State Laws Governing Tax-Forfeited Lands***

**State law does not require counties to report annually to the Secretary of State the market values and owners of record of tax-forfeited lands.**

Presently, state law requires counties to report annually all lands in which the state's title has matured—i.e., all lands which the state may now enter and sell. However, when this report is made, counties are not required to provide assessed values or market values to the state unless requested by the Public Lands Division. This could hamper any effort to aggressively market tax-forfeited property by depriving potential purchasers of information needed

to make intelligent decisions about the purchase of such lands.

**No state agency regularly inspects tax-forfeited lands for evidence of trespass or waste.**

State law gives the Secretary of State the duty of prosecuting cases against those who trespass against state lands or who remove timber therefrom. Since state land is distributed throughout the eighty-two counties and the division has only eight employees, the division realistically cannot police its lands statewide. While the responsibility to bring suits could be kept in the Public Lands Division, state law should be amended to require an agency with a statewide presence, such as the Department of Wildlife, Fisheries, and Parks, to inspect such property routinely and file reports with the Secretary of State.

#### ***Revenue-Generating Potential of Tax-Forfeited Lands***

For fiscal years 1990 through 1992, revenues generated from the sales of tax-forfeited lands totaled \$925,481. In recent months, the revenue-generating potential of tax-forfeited land has raised considerable interest. One concerned citizen has suggested that the revenue-generating capacity of such sales could reach \$50 million per year. PEER has not concluded that as much as \$50 million of new revenue could be raised by the sale of tax-forfeited lands, but does conclude that some additional revenues could be raised as a result of more aggressive promotion of tax-forfeited lands. Secretary of State staff estimate that once the database is complete, approximately \$500,000 per year (up to a cumulative total of \$5 million) in new revenue could be generated, based on parcel values of \$13 million.

#### ***Potential For Privatization***

Presently the functions of the Public Lands Division related to tax-forfeited property consist of overseeing property and returning it to the local tax rolls through sales. This function is similar in scope and function to property management and sales functions of real estate firms in the private sector. Because of this similarity, this function could be privatized. However, the success of privatization of this function could be affected by private firms' unwillingness to accept responsibility for selling the types of properties that comprise much of the state's tax-forfeited land inventory.



## Policy Options

PEER proposes two possible policy options as means for addressing the problems set forth in this report. Option One would transfer the titling, management and sales of tax-forfeited lands management and sales to the individual counties. The second option calls for retaining the function in the Secretary of State's Office, with the following recommendations:

1. Using existing resources, the Secretary of State should commence annual advertising of tax-forfeited lands for each county by July 1, 1993. The Secretary of State's Office should promulgate and implement policies which address the following:

- *Annual advertising of all state-owned tax-forfeited lands:* Printouts or other published material for each county should also be made available to potential buyers, describing property and giving estimated market value.
- *Consistent treatment of record owners:* The policy should address how long the Public Lands Division will work with a owner of record before it will sell property to a qualified applicant.
- *Blighted property:* A policy should provide that properties which have matured to the state and remain unsold for five years have a reduced selling price. The current 25%

price offered to speculators for blighted land would be appropriate.

2. The Legislature should amend MISS. CODE ANN. Section 7-11-15 (1972) to require that tax assessors and chancery clerks annually report to the Secretary of State the current value of the property stricken for taxes and any changes in record ownership. (See Appendix, page 15, for proposed legislation.)
3. The Legislature should amend MISS. CODE ANN. Section 49-4-9 (1972) to require that the Department of Wildlife, Fisheries, and Parks be responsible for inspecting state-owned tax-forfeited lands to insure that there is no waste or trespass committed thereon. (See Appendix, page 15, for proposed legislation.)
4. The Legislature should consider privatizing the sale and management of tax-forfeited lands. Such could be accomplished by investigating the possibility of contracting out the land-sales function to a realty firm.

Whether or not this function is privatized, the Legislature should review the performance of the Public Lands Division (or its private-sector successor) five years from now to determine whether revenue production from sales of tax-forfeited lands has increased. If revenues have not increased, the Legislature should consider eliminating all state responsibility for this function and transfer tax-forfeited land management and sales to the individual counties.

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# **A Limited Review of the Management of Tax-Forfeited Lands by the Division of Public Lands, Office of the Secretary of State**

## ***Introduction***

### **Authority**

At its meeting of May 27, 1992, the PEER Committee, in response to a citizen complaint, began a limited review of the management of tax-forfeited lands by the Public Lands Division, Office of the Secretary of State. The Committee conducted the review pursuant to MISS. CODE ANN. Section 5-3-57 (1972).

### **Scope and Purpose**

PEER sought to determine whether the Secretary of State manages the office in accordance with law and makes continuous and concerted efforts to promote and market tax-forfeited lands.

### **Methodology**

In conducting this review, PEER:

- reviewed appropriate provisions of the MISSISSIPPI CODE ANNOTATED (1972), as well as decisions of the Mississippi Supreme Court;
- reviewed policies and procedures of the Public Lands Division of the Office of the Secretary of State;
- interviewed personnel of the Public Lands Division;
- interviewed personnel of the Central Data Processing Authority regarding the acquisition of data processing equipment for the Public Lands Division;
- reviewed applications for land patents, land patent files, and other pertinent information relating to the receipt and disposition of tax forfeited property; and,
- reviewed literature from other states regarding the management of tax-forfeited public lands.

## Overview

The complaint which precipitated this review contended that the Secretary of State's Office does not obtain the maximum possible amounts for tax-forfeited property, thus depriving the state of an important revenue source. Further, the complaint alleged that some tax-forfeited property was not being offered to the public because the Attorney General's Office was improperly removing property from the lists of property available to the public for sale (a legal practice known as "striking off"). The complaint also alleged that the Secretary of State's Office does not provide sufficient protection against waste and trespass for tax-forfeited lands.

PEER found deficiencies in the management of the Public Lands Division: a limited statewide system for advertising tax-forfeited lands, and inconsistencies in the treatment of applicants who purchase tax-forfeited property. Also, the Public Lands Division should define the term "blighted" for purposes of property sales.

PEER puts forth two policy options which address the weaknesses noted in this report. The first option would call for the transfer of tax-forfeited lands management and sales to the individual counties. The second option calls for retaining the function in the Secretary of State's Office with the following technical corrections recommended by PEER:

- amend state law to require that county officials annually provide to the Secretary of State information regarding property stricken--specifically, its value and owner of record; and,
- require the Department of Wildlife, Fisheries and Parks to investigate and report to the Secretary of State instances in which trespasses have occurred on state-owned tax-forfeited lands.

## ***Background***

Failure to pay property taxes to local governments in Mississippi can result in auction of the real property against which unpaid taxes were assessed and sale to the highest bidder. In the event that the property is not sold at auction, it is stricken or "sold" to the state for the back taxes.

### **History of the State's Involvement in Collecting County Taxes Through Sale**

Counties collect their own property taxes and use these funds for their operations. When property taxes are not paid in a given year, the county tax collector advertises these lands for sale. If no one bids on the land, then it is struck off to the state for the back taxes and the costs of the sale. (For more detail on the counties' interests and responsibilities under present laws, see pages 11 through 12).

Strike-off to the state of delinquent tax lands for which no bid has been received has been a policy of this state traceable to the nineteenth century. Chapter 8, Article 17 (26), *Hutchinson's Code of 1848*, provided that lands be sold in April for delinquent taxes, with lists transmitted to the state auditor of those lands for which no bid was received. Changes in this practice have taken place (i.e., which official has responsibility, months for sale, and periods of redemption), but the basic concept providing for strike-off to the state has been part of Mississippi law for 144 years. From 1942 to 1982, the state had a direct interest in the collection of ad valorem taxes, as there was a statewide property tax levy for the benefit of state government. For the remainder of the period since 1848, local governments have had the financial interest in the method of collection employed, as it was local government taxes being collected through sales of property. The state interest has been in whatever revenues beyond local taxes collected that could be retained for the general fund.

### **Operations of the Public Lands Division**

Until 1978, the management of tax-forfeited lands, as well as certain other state-owned lands, was the responsibility of the State Land Commissioner. In that year, the Legislature enacted Chapter 458, *Laws of 1978*, which abolished the office of Land Commissioner and transferred those duties to the Secretary of State. Codified as a result of this enactment was Section 7-11-4, which provides that whenever the terms *land commissioner*, *state land commissioner*, *state land office*, or *land office* appear in certain sections of the CODE, they shall mean the Secretary of State. MISS. CODE ANN. Section 7-11-6, enacted at the same time, requires the creation of an assistant secretary of state's position to direct the activities of the former land office.

With respect to land management, MISS. CODE ANN. Section 7-11-11 specifically provides that the Secretary of State is responsible for tax-forfeited lands after the redemption period has elapsed. Additionally, CODE Section 7-11-13 requires that the Secretary of State's Office maintain records of all state-owned land in a separate, well-bound book. With regard to recording of records, the Secretary of State must maintain sufficient books for land in each county. The Secretary of State must also provide proper forms to the chancery clerks for recording lands struck to the state for taxes. This section further provides that the Attorney General review such certificates of the chancery clerks and that the Secretary of State, with the approval of the Attorney General, strike lands with insufficient description or for other cause which in the opinion of the Attorney General vests title in some other person. Title of the state to such lands is thereby relinquished.

Other provisions governing the general operation of the administration of tax-forfeited lands are found in Chapter 1 of Title 29, MISS. CODE ANN. (1972). These additional provisions describe the mechanics of the state's acquisition, management, and sale of tax-forfeited lands. Specifically, these sections relate to the effects of void tax sales, the issuance of special patents, and the patenting process in general.

#### **Revenue Generated from Tax-Forfeited Lands Sales**

The Public Lands Division issued a total of 931 patents for tax-forfeited lands in fiscal years 1990 through 1992, as follows:

FY 1990	299
FY 1991	234
FY 1992	398

The Public Lands Division presently has claim to 7,776 tracts of tax-forfeited land in sixty-nine of the eighty-two counties. A complete count of all tracts under claim by the state is not yet available, as computer files have not been created for thirteen counties, including Itawamba, Pearl River, Sunflower, Tallahatchie, Tate, Tishomingo, Tunica, Union, Wayne, Webster, Wilkinson, Winston, and Yalobusha. (According to Secretary of State staff, the contractor performing the file computerization is scheduled to be completed on December 31, 1992.) For tax-forfeited lands in these counties, a record is maintained in county books maintained at the Public Lands Division. Such records are kept chronologically, and are not ideally suited, as are computer records, for providing an immediate inventory of all lands under state claim regardless of the year in which they came to be sold to the state for taxes.

For fiscal years 1990 through 1992, revenues generated from the sales of tax-forfeited lands totaled \$925,481, as follows:

FY 1990	\$263,272
FY 1991	\$207,596
FY 1992 (est.)	\$454,613

## *Findings and Conclusions*

Weaknesses exist in the procedures and laws controlling the management and sale of tax-forfeited lands. In addition, laws providing protection for state lands against trespass or waste do not insure that sufficient investigative responsibilities will be assigned to either the Secretary of State or some agency which reports to the Secretary of State. The operation of tax-forfeited land management and sales could be a possible candidate for privatization.

### **Weaknesses in Procedures**

#### **The Public Lands Division does not advertise sales of tax-forfeited lands statewide.**

At present, persons who are interested in the purchase of tax-forfeited lands can only access records of tax sales at the Secretary of State's Office in Jackson or at one of the eighty-two chancery clerks' offices. The latter keep information pertinent to their own counties only. This is the only way potential buyers can determine what is for sale and where the land is located.

While the Public Lands Division has considerable amounts of tax-forfeited property in its inventory (7,776 tracts in sixty-nine counties), it has advertised in the media only on a limited basis. Since 1990, the division has placed fifteen newspaper advertisements for the sale of tax-forfeited property. While advertising is no guarantee of success in sales, it can help the seller inform potential customers of the availability of tax-forfeited lands. In light of this, any agency with the responsibility of marketing public lands should use the most effective means of informing the market and bringing buyers together with the available lands. Advertising can also expand the market for such lands beyond the land speculators who customarily know and understand the workings of tax forfeiture sales. Ultimately, more sales of lands would return money to local government, because sales place previously untaxable lands back on the assessment rolls. (See Exhibit, page 7, for estimates of potential revenue from the sale of public lands.)

The division's failure to perform this function in the past could be attributed to the lack of an easily accessible database for tax-forfeited property. Presently the division is entering records for all tax-forfeited property on computer, which will expedite preparation of lists of property available for sale. This process of computerization has been going on for the past three years. The division now has a local area network containing information on sixty-nine counties.

**Exhibit**  
**Estimated Potential Revenue from Sale of Public Lands**  
**(Based on FY 1992 Assumptions)**

		% of Non-Discounted Forfeited Land Available for Sale				
		5%	25%	50%	75%	100%
<b>Market Value of Average Forfeited Tract As a % of Market Value of Average Non-Forfeited Tract</b>	<b>25%</b>	\$899,000	\$2,881,600	\$5,359,848	\$7,838,097	\$10,316,346
	<b>50%</b>	\$1,394,650	\$5,359,848	\$10,316,346	\$15,272,844	\$20,229,342
	<b>75%</b>	\$1,890,300	\$7,838,097	\$15,272,844	\$22,707,591	\$30,142,338
	<b>100%</b>	\$2,385,950	\$10,316,346	\$20,229,342	\$30,142,338	\$40,055,334

NOTE: The above values are possible only if the following assumptions are correct.

<b>Assumptions:</b>			
1 Total true value (statewide)	\$42,528,161,172	8 Percent of sales at discount	4.46%
2 Forfeited value as a % of total value	0.098%	9 Maximum value of sales at discount	\$1,852,295
3 Estimated max mkt value of forfeited land (statewide)	\$41,504,278	10 Discounted value of sales at discount	\$403,351
4 % of property to be sold at 50% of market value to speculators	0.080%	11 Maximum value of non-discounted sales	\$39,651,983
5 % of property to be sold at 25% to former owners	3.700%	12 Total maximum value under these assumptions	\$40,055,334
6 % of property to be purchased for back taxes	0.683%		
7 Back taxes as a % of true value	1%		



**The Public Lands Division lacks a procedure addressing the amount of time the Secretary of State must wait after the initial thirty-day period to sell land to persons who also own interest in that land.**

When a potential purchaser files an application on property, the division is not under any legal obligation to sell to the person who makes the application. Therefore, the office can continue to work with former owners of record who may in the future be able to get their property back. Returning property to former owners of record can be a worthy goal, especially when the failure to pay taxes could be attributed to an inadvertent error. Agency procedures should, however, address the issue of the length of this process when there are potential buyers ready to purchase the property.

After reviewing approximately 100 transactions from the last three months of FY 1992, PEER determined that in some cases the Public Lands Division was quick to sell property when purchasers were willing to pay high prices, even if mortgage interest holders, such as the Resolution Trust Corporation (RTC), might have wished to bid on the property. In one of the two cases where this happened, the interested party applied on March 20, 1992; the RTC was given notice on April 2 and 13; and the land was sold to the applicant on May 12, 1992. This may not have given RTC sufficient time to decide on a course of action. In another instance, where the land was worth much less, an applicant entitled to a special patent for back taxes who applied to purchase land on August 23, 1990, was given until July 22, 1992, to pay the back taxes while a second applicant who filed in November 1991 had to wait and eventually did not receive the land for which he applied.

While PEER does not question the practice of helping a small land owner get property back or the practice of getting high value from a sale, the Public Lands Division should devise and adhere to a formal practice which clearly defines how long the division will work with former interest holders before offering the property to other applicants. The failure to devise and adhere to a uniform policy could create inequities such as the example above and cause some potential purchasers to question the consistency of the sales process.

**The Public Lands Division has not defined "blighted property" for the purpose of sales.**

At present, the Secretary of State sells certain "blighted" properties for 25% of value. While state law does not prohibit such sales, the Public Lands Division has not defined "blighted property," which could confuse potential purchasers as to the price of certain lands. Such a problem could be eliminated if the Secretary of State devised a rolling pricing scheme to discount certain properties if such do not sell within five years of maturing to the state. Lands not sold within five years could be automatically

discounted regardless of whether they fit within any reasonable conception of "blighted."

### **Weaknesses in State Laws Governing Tax-Forfeited Lands**

State laws governing the management and sale of tax-forfeited lands provide an intricate, comprehensive statement of the duties of the Public Lands Division and respective counties relative to the management and sale of tax-forfeited lands.

#### **State law does not require counties to report annually to the Secretary of State the market values and owners of record of tax-forfeited lands.**

Presently, state law requires counties to report annually all lands in which the state's title has matured--i.e., all lands which the state may now enter and sell. When this report is made as required under MISS. CODE ANN. Sections 27-41-81 and 29-1-21, the county is not required to provide assessed values or market values to the state. Further, counties are not required to provide annually to the Secretary of State the names of owners of record. While a title may have matured to the state, it can happen that a former record owner might convey a "quit claim deed" to another person, thus causing whatever interest the prior record owner had to transfer to another. Currently, the state may only obtain this information if it requests such from county tax assessors under MISS. CODE ANN. Section 29-1-21. If the state is to expand advertising to all counties of the state, state law should require necessary information to be sent routinely from counties to the Secretary of State without requests being made by the latter.

Failure to obtain this information regularly could hamper any effort to market tax-forfeited property aggressively by depriving potential purchasers of information needed to make intelligent decisions about the purchase of such lands.

#### **No state agency regularly inspects tax-forfeited lands for evidence of trespass or waste.**

State law gives the Secretary of State the duty of prosecuting cases against those who trespass against state lands or who remove timber therefrom. Since state land is distributed throughout the eighty-two counties and the division has only eight employees, the division realistically cannot police its lands statewide. While the responsibility to bring suits could be kept in the Public Lands Division, state law should be amended to require an agency with a statewide presence, such as the Department of Wildlife, Fisheries, and Parks, to inspect such property routinely and file reports with the Secretary of State. While personnel of other agencies could be used to provide inspections, wildlife conservation officers would be the

best choice, as they are sworn officers and as such may make arrests if necessary.

### **Revenue-Generating Potential of Tax-Forfeited Lands**

In recent months, the revenue-generating potential of tax-forfeited land has raised considerable interest. One concerned citizen has suggested that the revenue-generating capacity of such sales could reach \$50 million per year. PEER reviewed the revenue-generating capacity of such sales under several different hypothetical situations (see Exhibit 1, page 7). Because considerable changes occur yearly in the number of parcels patented, and an increase in advertising efforts could generate an increase in patenting of tax-forfeited lands, a revenue projection formulated with any degree of certitude would be extremely difficult to devise.

PEER has not concluded that as much as \$50 million of new revenue could be raised by the sale of tax-forfeited lands, but does conclude that some additional revenues could be raised as a result of more aggressive promotion of tax-forfeited lands. According to Secretary of State staff, land for which they have ascertained value has a market value of approximately \$13 million. The staff estimates that approximately \$5 million could be generated if all marketable tax-forfeited parcels were sold.

### **Potential For Privatization**

Presently the functions of the Public Lands Division related to tax-forfeited property consist of overseeing property and returning it to the local tax rolls through sales. This function is similar in scope and function to property management and sales functions of real estate firms in the private sector. Because of this similarity, this function could be privatized. (The proposed privatized function should not be confused with other functions of the Public Lands Division, such as property title analysis; records maintenance, including application and patent files; and sixteenth-section lands management.)

Assuming that a real estate firm charging a commission of 6% assumed the duties of selling the property, and revenues remained constant for purposes of this example, FY 1992 revenues of \$454,613 would cost the state commissions of \$27,276. This, in turn, could save the state approximately \$56,053 in salaries and fringes for two positions in the Public Lands Division.

The success of privatization of this function could be affected by private firms' unwillingness to accept responsibility for selling the types of properties that comprise much of the state's tax-forfeited land inventory. Much of this property includes run-down or blighted urban property with minimal value.

## ***Policy Options for Managing Tax-Forfeited Lands***

The state has essentially two options with respect to the sale of lands forfeited for non-payment of county property taxes: transfer this function to each county government to manage for itself; or, retain the present system wherein the state receives title to tax-forfeited lands after the period of redemption, sells them, and returns accrued taxes to the counties and other affected local governments.

### **Policy Option One**

- ***Transfer title and management functions of tax-forfeited lands to the counties***

If the Legislature believes that either the Secretary of State's office is not the most effective location for tax-forfeited lands management, or that philosophically speaking, the function belongs in county government, the Legislature could make each county responsible for the sale of land not sold at county tax auctions for delinquent county taxes.

### ***Counties' Interests and Responsibilities Under Present Laws***

Counties are responsible for collecting their own property taxes and auctioning lands on which these taxes have not been paid. Such taxes provide the counties with funds for their operations. County taxes become due on February 1 of each year as provided for under MISS. CODE ANN. Section 27-41-1 (1972). In the event that such taxes are not paid by February 1, the county charges interest on the entire assessment, or the unpaid portion in the amount of 1% per month (see CODE Section 27-41-9).

When property taxes are not paid by August 5 of any given year, the county tax collector advertises all lands on which taxes have not been paid. This advertisement is to run for two consecutive weeks and contain a legal description of the land in question (see CODE Section 27-41-55). This same section authorizes the tax collector to hold such sales in April, after advertisements commencing on February 15 if the tax collector so chooses. Tax sales are conducted by the tax collector on the last Monday in August or the first Monday in April. In such sales, tracts may be subdivided into forty-acre plots if such would be sufficient to pay off the outstanding tax liability. City and town tracts are to be sold by lots or other subdivisions by which the property is described (see CODE Section 27-41-61). If no person bids on the portion or a tract, or the entire tract, then it is struck off to the state for back taxes and costs incident to the sale (see CODE Section 27-41-59).

A record owner whose property is sold is entitled to a two-year statutory period of redemption. During this two-year period, the owner or any other interestholder may pay off the tax liability, costs, and damages in the amount of 5% of taxes owed and receive from the chancery clerk a release of all claims against the land. The redeemer does not have to pay the person who bought land at the tax sale (see various sections, Title 27, Chapter 45, MISS. CODE ANN. [1972]).

Prior to the expiration of the redemption period, the chancery clerk is responsible for researching interests in land and giving notice to interestholders that the redemption period is about to expire. Such notice is mandatory under law, and failure to give such notice results in the voiding of the tax sale (see various sections, Title 27, Chapter 43, MISS. CODE ANN. [1972]).

Thus, prior to the purchaser's receiving a right to possession, or the state receiving perfect title to the tax-forfeited property, the county is responsible for performing most critical functions related to collection of its taxes either through voluntary payment or through sale. It is only after all such methods have failed that the state becomes an active participant in the process.

#### *Strengths of Transferring Strike-Off Functions to the Counties*

As noted above, local government depends on sales of lands as a means of collecting delinquent taxes. By providing that land be struck off to the counties, state law would place the burden of managing and selling lands on those entities which benefit from the land sales. Any revenues above and beyond that necessary to pay costs and accrued local taxes could also be used to benefit the local government which bore the burden of collecting the taxes and which suffered from having lands temporarily off the county's tax rolls.

Such a change would also be consistent with state laws governing municipal tax strike-offs. Under present law (CODE Section 21-33-69), property on which municipal or municipal school district taxes have not been paid may be struck-off to the municipality. Municipalities are authorized to pay any delinquent county taxes. When such lands are struck to the state for non-payment of county taxes, municipalities may redeem or purchase such from the state.

#### *Weaknesses of Transferring Strike-Off Functions to the Counties*

Presently, the method of striking-off lands to the state insures that when property is sold, counties and other affected local governments will

get two years of taxes returned to them. Additionally, the Secretary of State has the potential to engage in statewide marketing of such lands, which could attract buyers to from more than the local area. This potential for statewide marketing could result in returning property to the tax rolls faster. This potential would be lost if the function is given to county governments. Further, the state could lose a revenue source which, while not large, could result in the return of some funds to the general fund at the end of each fiscal year.

## **Policy Option Two**

- ***Modify and retain the present system of selling tax-forfeited lands***

If the Legislature wishes to retain the present method of selling tax-forfeited lands, it should make certain modifications in the current system (see recommendations, below).

### *Strengths of Retaining Strike-Off And Sale Functions In State Government*

Improvements in advertising lands could create a statewide market for tax-forfeited lands which might not be possible if the functions were transferred to each county. Further, the state would lose a potential revenue source.

### *Weaknesses of Retaining Strike-Off and Sale Functions in State Government*

Counties which have the primary interest in the collection of their taxes and the return of property to the tax rolls are not in control of the process by which lands are marketed.

### *Recommendations*

1. Using existing resources, the Secretary of State should commence annual advertising of tax-forfeited lands for each county by July 1, 1993. The Secretary of State's Office should promulgate and implement policies which address the following:
  - *Annual advertising of all state-owned tax-forfeited lands:* Printouts or other published material for each county should also be made available to potential buyers, describing property and giving estimated market value.

- *Consistent treatment of record owners:* The policy should address how long the Public Lands Division will work with an owner of record before it will sell property to a qualified applicant.
  - *Blighted property:* A policy should provide that properties which have matured to the state and remain unsold for five years have a reduced selling price. The current 25% price offered to speculators for blighted land would be appropriate.
2. The Legislature should amend MISS. CODE ANN. Section 7-11-15 (1972) to require that tax assessors and chancery clerks annually report to the Secretary of State the current value of the property stricken for taxes and any changes in record ownership. (See Appendix, page 15, for proposed legislation.)
  3. The Legislature should amend MISS. CODE ANN. Section 49-4-9 (1972) to require that the Department of Wildlife, Fisheries, and Parks be responsible for inspecting state-owned tax-forfeited lands to insure that there is no waste or trespass committed thereon. (See Appendix, page 15, for proposed legislation.)
  4. The Legislature should consider privatizing the sale and management of tax-forfeited lands. Such could be accomplished by investigating the possibility of contracting out the land-sales function to a realty firm.

Whether or not this function is privatized, the Legislature should review the performance of the Public Lands Division (or its private-sector successor) five years from now to determine whether revenue production from sales of tax-forfeited lands has increased. If revenues have not increased, the Legislature should consider eliminating all state responsibility for this function and transfer tax-forfeited land management and sales to the individual counties.

*Appendix*

*Proposed Legislation Concerning Management of Tax-Forfeited Lands*

Mississippi Legislature

Regular Session, 1993

BY;

BILL

AN ACT TO AMEND SECTION 7-11-15, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT CHANCERY CLERKS REPORT CERTAIN INFORMATION REGARDING TAX-FORFEITED LANDS TO THE SECRETARY OF STATE; TO AMEND SECTION 49-4-9, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT THE DEPARTMENT OF WILDLIFE, FISHERIES, AND PARKS INSPECT STATE-OWNED LAND UNDER THE JURISDICTION OF THE SECRETARY OF STATE FOR EVIDENCE OF WASTE OR TRESPASS, AND TO PROVIDE INFORMATION TO THE SECRETARY OF STATE NECESSARY TO PREVENT SUCH WASTE OR TRESPASS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Section 1. Section 7-11-15, Mississippi Code of 1972, is amended as follows:

**§ 7-11-15.**

The secretary of state shall secure a sufficient number of suitable and well bound books for each county, so that the lands now or hereafter owned by the state may be compiled therein. The books, in addition to the necessary columns on which to list all necessary information with reference to the lands owned, shall contain a column on which to number all patents or contracts issued and any other information. The order of arrangement and all other matters pertaining thereto are hereby specifically left to the discretion of the secretary of state.

In addition to the foregoing records, the secretary of state shall provide and cause to be kept a separate register of the several different classes of lands, with appropriate references to other records or documents for information concerning the whole class, and of each parcel, if need be. He may cause correct township maps to be prepared from the field notes of original surveys, with all errors in the location of natural objects, if any there be, corrected, which maps may be supplied to the several counties at reasonable prices; and he may, in like manner, have maps and plats lithographed and sold.



The secretary of state shall procure a sufficient number of forms of certificates which shall be used by the chancery clerks of each of the various counties in certifying to the secretary of state's office lands sold to the state for unpaid taxes in his county, and the secretary of state shall provide such certificates in such form that they may be bond by him and used as a part of the permanent records of his office. The said chancery clerks shall use only such forms of certificates in certifying said lands to the secretary of

state's office, and failure to do so shall subject such chancery clerk so refusing or failing to do so, and his bondsman, to a penalty of five hundred dollars (\$500.00), which penalty shall be collected by the attorney general in a suit therefor filed in the name of the State of Mississippi. Such certificates, before being filed by the secretary of state, shall be examined by the attorney general. The secretary of state, with the approval of the attorney general, shall strike from such certificates all lands which, by reason of insufficient description or other cause, in the opinion of the attorney general are not the property of the state; and the title of the state to such lands as may be thus stricken off shall be thereby relinquished.

In addition to any other record or document which the Chancery Clerks, Tax Collectors, or Tax Assessors provide to the Secretary of State, the Chancery Clerk shall annually report to the Secretary of State whether or not any person has conveyed, devised, bequeathed, or otherwise transferred to any other person by any deed or other instrument, any interest in land stricken to the state. This shall apply to all lands stricken to the state for a period going back twenty-five years from the date the original owner's period of redemption expired, and the state acquired a right to possess the land. The Chancery Clerk shall annually obtain from the Tax Assessor a market value for all land which has been struck to the state over a period of twenty-five (25) years, and report same to the Secretary of State each year. All reports required under this sub-section shall include a description of the land being valued, and/or the land in which an interest has been transferred. All information required under this sub-section shall be reported to the Secretary of State no more than ten (10) days after the report required under Section 27-41-81 is to be made to the Chancery Clerk by the Tax Collector.

Section 2. Section 49-4-9, Mississippi Code of 1972, is amended as follows:

**§49-4-9.**

Effective July 1, 1979, the Department of Wildlife, Fisheries and Parks shall have the following powers and duties:

- (a) To formulate the policy of the department regarding wildlife and fisheries within the jurisdiction of the department;
- (b) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;
- (c) To commission or conduct studies designed to determine alternative methods of managing and conserving the wildlife and fisheries resources of this state in a manner to insure efficiency and sustained productivity;
- (d) To receive the advice and counsel of the advisory committees created for the Division of Parks and Recreation and the Division of Wildlife and Fisheries; and
- (e) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.
- (f) To inspect all state-owned property under the management and control of the Secretary of State, and to report to the Secretary of State any occurrence of any waste or trespass against such land. In furtherance of this duty, employees of the Department of Wildlife, Fisheries, and Parks shall have the authority to arrest such persons who commit any trespass against state lands in violation of law, and may collect any such information necessary to the Secretary of State to maintain any action, civil or criminal, against any trespasser, or any person who commits waste upon state-owned lands.

Section 3. This act shall take effect and be in force from and after July 1, 1993.

## *Agency Responses*

***NOTE: The Office of the Secretary of State chose to provide responses to both an earlier draft and the final draft of the PEER Committee report. Per the request of the Office of the Secretary of State, both responses are included, in order of their receipt by the Committee.***

STATE OF MISSISSIPPI

SECRETARY OF STATE



DICK MOLPUS  
SECRETARY OF STATE

POST OFFICE BOX 136  
JACKSON, MISSISSIPPI 39205  
TELEPHONE (601) 359-1350

JAMES O. NELSON, II  
ASSISTANT SECRETARY OF STATE  
PUBLIC LANDS

October 19, 1992

Mr. James Barber  
Chief Analyst-Operations Division  
PEER Committee  
Post Office Box 1204  
Jackson MS 39215-1204

Dear James:

Please consider this correspondence as my agency's formal response to the draft report reviewing the management of taxforfeited lands. I appreciate your taking the time to meet with Linda Smith and me, and your making some of the revisions we requested. For the sake of brevity, as we discussed each of these items in our meeting, I will respond to the report for the most part in an outline format. Without having seen the final draft of the main report, however, it is difficult to respond to each and every item.

Overall, I found the report incomplete in giving the total view of what is being done to increase marketing and sales of tax-forfeited property. The report identifies weaknesses in procedures and makes recommendations as if they were PEER's own findings and recommendations, when in fact, the division itself had previously identified these weaknesses and is acting to resolve them. The report does not give the division sufficient credit or acknowledgement in this regard.

Specifically, in 1988 we embarked on a five-year effort to identify, computerize, and then market tax-forfeited lands. That effort has been successful to date. The PEER report omits mention of the actions taken since 1988. In essence, the report is criticizing a work in progress using the division's own blueprints.

Mr. James Barber  
October 19, 1992  
Page 2

Under the marketing and promotion section of the report:

1) We are in fact advertising in local newspapers. We have advertised 15 times in 10 counties which the report acknowledges. It does not acknowledge that we sent a newsletter to nearly 35,000 corporations and individuals and that we provide county inventory printouts on a daily basis.

2) The fact that we are marketing on what the report terms a limited basis--though there is no statutory requirement that we do so at all--is certainly attributed to the lack of an easily accessible database.

3) We have long recognized the need for an automated inventory and marketing of State surplus property, including tax-forfeited lands. I personally assisted in drafting the legislation which provided the funding for the division's automation project and succeeded in achieving its passage in the 1988 Legislature. I worked with the Legislature and sister agencies on numerous occasions since 1988 on inventory and marketing of state-owned lands. The Public Lands Division funded a statewide inventory pilot project for the MARIS subcommittee on state-owned lands in 1989. I was a technical advisor to the 1989 House Interim Committee on Cataloging Public Lands and I wrote the original inventory and surplus real property legislation introduced in the 1990 Legislature.

Under the amount of file processing time section of the report:

1) There is no statutory guidance for this function except the requirement that the division wait 30 days before an application is acted upon. The law, however, favors division investigation into the true condition of the title and a return of the property to former owners and heirs. Locating former owners and heirs is often a formidable task. The law also appears to advise caution in selling to speculators.

2) We have a clear procedure in processing applications from speculators when investigation has revealed a former owner who is residing on the property and who is willing to work with us in clearing his/her property--the former owner receives priority under our written rules and regulations.

3) The report's use of the RTC and Annie Davis cases is not justified in the context used. The report criticizes the division for moving too fast on the RTC case and not fast enough on Annie Davis' case. The statutes provide no guidance for this time limit and probably for good reason. The division must use its discretion on a case-by-case basis. A formal written time limit would only become meaningless by subsequent exceptions.

Mr. James Barber  
October 19, 1992  
Page 3

The report cites RTC may not have had sufficient time to decide on a course of action though it omits the fact that RTC had the 2 year redemption period within which to act, but didn't. RTC is an agency composed of professional mortgage bankers and attorneys and their interest was tracked down by the division's own investigation of the property in question. They were contacted by telephone and in writing and literally begged to file an application which they failed to do. Their own local counsel advised us to proceed with the sale to our other applicant. The division also consulted with a sister state land commissioner who conveyed his experience with RTC to us and recommended we proceed with the sale.

The report fails to note that Annie Davis requires assistance with her business affairs and was without legal representation. Yet she communicated with us regularly and advised she was saving to pay the taxes due on her property. She did in fact pay. This property was Annie Davis's ancestral homestead. We advised the speculator, who filed an application after Annie Davis, that we would not sell this property to him, when he applied. The division did not abuse its discretion in either of these two cases.

Under the blighted property section of the report:

- 1) The report fails to acknowledge that this is a recent issue. The division's initial policy discussion on how to deal with this issue took place in the presence of the PEER investigator.
- 2) The report's automatic rolling price recommendation needs further study. In practice, speculators and potential customers may choose to wait the recommended five years if they know in advance that we automatically lower our price.

Under the revenue generation section of the report:

- 1) Marketability of the parcels in inventory is a relevant and major issue which should be clearly addressed. The PEER investigator was present when Hinds County was advertised by the division and witnessed little response or interest in the parcels in inventory.

Mr. James Barber  
October 19, 1992  
Page 4

Under the privatization section of the report:

1) The report acknowledges that the sales and records [certification, application, investigation, and patent] functions of the division are separate duties, but it does not clearly state that should only the sales function be privatized, the division will still require its personnel in order to perform the records functions. It is also highly unlikely that a private firm would desire the sales and records functions of the division.

2) Desirability of the sales function also depends upon the marketability of the inventory as noted above.

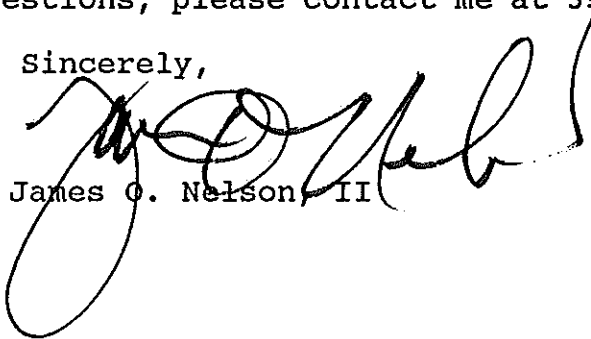
Under the final paragraph of the report:

1) PEER recommends another review in five years and we welcome it. The statutory goals and objectives must be clarified, however. Is revenue increase the statutory goal or is return of all possible parcels to the former owners and the tax rolls?

2) PEER recommends that upon review in five years, if the revenues have not increased, then the Legislature should consider transferring tax-forfeited land management and sales to the individual counties. The division suggests that a more prudent course of action would have that review include an in-depth survey of: a) other state's practices and, b) county management, to determine what method(s) have been most successful in achieving the goals and objectives of the law before recommending wholesale transfer of this important function.

I hope that I have provided you with clear responses to the report. If you have any questions, please contact me at 359-6373.

Sincerely,

  
James O. Nelson, II

JON:fs

STATE OF MISSISSIPPI

SECRETARY OF STATE



DICK MOLPUS  
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JAMES O. NELSON, II  
ASSISTANT SECRETARY OF STATE  
PUBLIC LANDS

November 12, 1992

Mr. James Barber  
Chief Analyst-Operations Division  
PEER Committee  
Post Office Box 1204  
Jackson MS 39215-1204



Dear James:

As the Committee's original draft of the report dated October 19, 1992 has been revised, please allow us this opportunity to likewise revise our previous response of the same date.

The latest draft report adds a new section which discusses a major public policy change--the transfer of tax-forfeited lands management to the individual counties. We were surprised that this section was added and the strengths and weaknesses of such a major policy change discussed without any additional research or study being done by PEER.

The focus of PEER's original investigation was clearly the operations of the Public Lands Division; not the feasibility of such a change. In our previous response, we recommended that an in-depth study be made of other states' practices and our state's current county management relating to these lands before such a change could be seriously considered. We believe such a study is a prerequisite to any discussion of state policy in this field.

Based upon our years of experience in administering state law on tax-forfeited lands, we have identified at least four (4) critical weaknesses which should be considered prior to transferring this responsibility to the counties:

- 1) Such a transfer would be fiscally unsound;
- 2) Such a transfer would be counter-productive to efficient marketing of the tax-forfeited lands;



- 3) Such a transfer would be counter to the current trend in how other states manage tax-forfeited lands;
- 4) Such a transfer would increase the likelihood of abuse of the system and violations of state law--it would be a step backward into the era of political patronage and favoritism.

#### **FISCAL SOUNDNESS**

We maintain such a transfer would cost the state much needed revenue. PEER has acknowledged that total revenues generated from the sales of tax-forfeited lands for fiscal years 1990 through 1992 totaled \$925,481. We have estimated that approximately \$500,000 per year in new revenue could be generated up to a current inventory total of \$5 million. These new revenues would be lost to the state and their loss would necessarily have to be made up through taxpayer dollars and the general fund.

Also, the tax-forfeited lands program, which includes the preservation, restoration, and maintenance of the state's historical land records has been a self-sufficient operation since 1988. Though the day-to-day responsibility would be transferred to the counties, state land records still must be maintained and public inquiries answered. Now, this function pays for itself. Upon transfer, the state would have to divert approximately \$41,000 annually to cover these necessary and permanent costs.

#### **EFFICIENT MARKETING**

In its original report, one of PEER's main criticisms of the operations of the Public Lands Division was that it did not do enough state-wide advertising of these lands. The report said:

While advertising is no guarantee of success in sales, it can help the seller inform potential customers of the availability of tax-forfeited lands. Advertising can also expand the market for such lands beyond the land speculators who customarily know and understand the workings of tax forfeiture sales...[PEER] does conclude that some additional revenues could be raised as a result of more aggressive promotion of tax-forfeited lands.

PEER findings support the argument against transfer of this function to the counties. If the public policy objective, whether from the county or state perspective, is to return this land to the tax rolls as soon as possible, then limiting the potential market for sales is illogical.

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Page 3

#### CURRENT TRENDS

The current trend among surrounding states in our region is not the transfer of this function to the individual counties. On the contrary, the trend is toward centralization and modernization of the entire function--the transfer of all responsibility for tax sales from the counties to the state. Arkansas has set the example. According to the Arkansas Land Commissioner's Office, yearly collections are now almost 10 times greater than they were before the 1983 transfer of responsibility to the state.

Our sister states recognize that in the absence of adequate bids or interested purchasers at county tax sales, title to the property vests in the state by necessity. Without state control or intervention, the property is likely to remain off the tax rolls and unproductive to the detriment of every level of government.

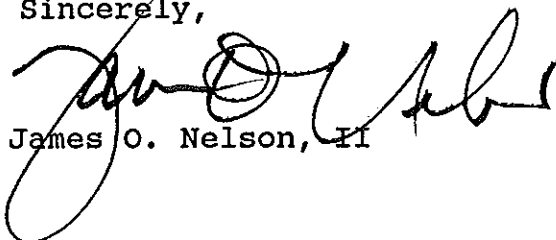
#### POTENTIAL FOR ABUSE

Wholesale transfer of this function to the counties raises the specter of potential abuse through cronyism and political patronage. Our office receives many complaints regarding the conduct of local sales. These complaints range from improper notice to tax sales conducted on the back steps of the local courthouse. The complaints come not only from land owners, but also mortgagees--the local banks and federal agencies like F.H.A. Currently, the state has no effective mechanism for monitoring and/or supervising local activities in this field.

Without the penalty of ultimate forfeiture to the state, the transfer of this responsibility to the individual counties would serve as a disincentive to pay taxes for those so inclined or those who believe they have connections in the local courthouse. Forfeiture to the state ensures that all taxpayers are treated equally no matter where they reside in the state.

Finally, we reiterate our recommendation that before any such transfer be discussed, all aspects and ramifications of such a transfer should be studied in-depth. If you have any questions or comments, please contact me at 359-6373.

Sincerely,



James O. Nelson, II

JON:fs

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