

West Virginia, conducted a sale of delinquent tax properties in Marion County, West Virginia.

2. That at the Tax Sale on June 29, 2016, Petitioner was the purchaser of State Auditor's Certification 24-6347 (9.61 acres belonging to Southland Properties LLC) for \$25,000.00, and State Auditor's Certification 24-6414 (14.133 acres Middletown Mall, Whitehall, belonging to Southland Properties LLC) for \$35,000.00.
3. Subsequent to the two (2) purchases by the Petitioner, on July 15, 2016, the Respondent notified Petitioner of all actions necessary to obtain Deeds for his two (2) purchases at the Tax Sale on June 29, 2016.
4. That in compliance with the instructions of the State Auditor's office and West Virginia Code 11A-3 et seq, Petitioner provided the Respondent a list of parties to be served with notices to redeem for the two (2) delinquent tax properties purchased on June 29, 2016.
5. That in response to the timely information provided by Petitioner, the Respondent prepared Notices to Redeem for State Auditor's Certifications 24-6347 and 24-6414, which Notices were duly served on the delinquent property owner, creditors and all other interested parties by regular mail, certified mail, as well as, publication in the local newspaper, The Fairmont Times.
6. That the Notices prepared and served by the Respondent fixed a deadline of October 17, 2016, for Southland Properties, LLC, its creditors or other interested parties to pay County taxes and costs of \$33,735.15 for Certification 24-6347, and a deadline of October 24, 2016, for Southland Properties LLC, its creditors or other interested parties to pay County taxes and costs of \$64,224.34, for Certification 24-6414.

7. The delinquent taxpayer, Southland Properties, LLC, on October 17, 2016, did not pay the taxes and costs established by the Respondent, but filed for Chapter 11 Bankruptcy Relief before the United States Bankruptcy Court for the Northern District of West Virginia.
8. Likewise, none of creditors or other interested parties given notice of the deadlines by the Respondent to pay the delinquent County Taxes, paid the County taxes and costs, as set forth in the Notices to Redeem for State Auditor's Certification No. 24-6347 or State Auditor's Certification No. 24-6414 purchased by the Petitioner.
9. That due to the Bankruptcy filing of Southland Properties LLC, on October 17, 2016, the Respondent, on October 17, 2016 and October 18, 2016, prepared written notices to the Petitioner, "setting aside" Petitioner's purchase of Certifications 24-6347 and 24-6414. Upon notice of the actions of the Respondent, "setting aside" the Petitioner's two (2) Tax Sale purchases, the Chief Tax Deputy for Marion County, West Virginia, on October 25, 2016, issued two (2) refund checks to the Petitioner for his Tax Sale purchases. While the Respondent had an affirmative duty to obey the Automatic Stay issued by the Bankruptcy Court upon the Bankruptcy Filing of Southland Properties LLC, the Federal Bankruptcy Court did not enter any Order which "set aside" the two (2) purchases of Petitioner.
10. That on December 29, 2016, Petitioner filed a Motion for Relief from the Automatic Stay with the United States Bankruptcy Court for the Northern District of West Virginia, concerning the two (2) parcels of real estate purchased by the Petitioner belonging to the Debtor, Southland Properties LLC.
11. That while Petitioner's Motion was pending, before the Bankruptcy Court, the Office of the United States Trustee filed a Motion to Dismiss the Chapter 11 Bankruptcy

Filing of Southland Properties LLC, before the Bankruptcy Court, for repeated non-compliance with the duties and requirements of a Chapter 11 Bankruptcy Debtor.

12. On March 3, 2017, the Bankruptcy Court entered a Final Order which dismissed the Bankruptcy Filing of Southland Properties LLC, which terminated the Federal Automatic Stay with respect to the two (2) parcels of real estate of Southland Properties LLC, purchased by the Petitioner on June 29, 2016.
13. Upon receipt of the Dismissal Order terminating the Automatic Stay, Petitioner gave Notice of the Bankruptcy Court's Order to the Respondent, and demanded deeds for his two (2) purchases from the Tax Sale of June 29, 2016.
14. The Respondent admitted in his Motion to Dismiss, as well as, at the Hearing held in this matter, that the Petitioner performed all duties required of a Tax Sale Purchaser under W. Va. Code 11A-3 et seq. The Respondent, however, cites W. Va. Code 11A-3-59 as the sole reason for his refusal to issue the two (2) Tax Deeds to the Petitioner. Respondent relies on the language of 11A-3-59, which states that "except when ordered to do so as provided in section sixty of this article, the deputy commissioner shall not execute and deliver a deed more than thirty days after the purchaser's right to the Deed accrued".
15. The Petitioner and Respondent agreed that the Petitioner's right to receive Tax Deeds for his two (2) purchases accrued on October 17, 2016, for 24-6347 and October 24, 2016, for 24-6414.
16. Respondent asserted that since the Bankruptcy Court's Automatic Stay was in effect during the statutory thirty (30) day period and the statutory thirty (30) day period expired without the issuance of the Tax Deeds, Respondent has no authority to issue Deeds to the Petitioner.

17. The Petitioner asserts that W. Va. Code 11A-3-59 is expressly made subject to the provisions of 11A-3-60, which provides for the issuance of Tax Deeds up to a six (6) month period from the date the Tax Sale Purchaser's right to a Deed accrued. The Legislative intent was to give the Tax Sale Purchaser more than a thirty (30) day period to receive his Deed by Petitioning the Circuit Court. Petitioner asserts that the Respondent is incorrect interpreting W. Va. Code 11A-3-59 as a "drop dead date" from which a Tax Sale Purchaser has no recourse or remedy.
18. That upon the refusal of the Respondent to issue Tax Deeds for the Petitioner's two (2) purchases, Petitioner gave the Respondent timely notice of this lawsuit pursuant to W. Va. Code 11-3-60, prior to filing this proceeding to compel the issuance of his tax deeds.
19. That despite the Tax Sale of June 29, 2016, Southland Properties LLC never paid its taxes to the Marion County Sheriff and Petitioner has never received Deeds for his two (2) purchases. Likewise, none of the creditors or interested parties notified of their right to redeem the real estate by the Respondent ever paid the Delinquent Taxes to the Sheriff of Marion County. As of the date of the Hearing before this Court, the delinquent County Taxes and related statutory costs for the Petitioner's two (2) tax sale purchases remain unpaid, more than a year after the June 29, 2016, delinquent tax sale.
20. At the Hearing before the Court, the parties were given an opportunity to provide additional facts to the Court, but the parties stated that all material facts have been delivered to the Court by the Pleadings, Exhibits and Affidavit.

Based upon the foregoing, the Court makes the following Conclusions of Law:

21. A Motion for Summary Judgment should only be granted when it is clear that there

is no genuine issue of material fact to be tried and inquiries concerning additional facts are not necessary to clarify the application of the law.

22. This Court faced with an issue of statutory construction, need not adopt a statutory interpretation which produces an outcome which is antithetical to the Legislature's discernible intent. When 11A-3-59 and 11A-3-60 are read together as the Legislature intended, it is clear that the expiration of the thirty (30) day period in 11A-3-59 does not preclude a Tax Sale Purchaser from obtaining Deeds for his two (2) Tax Sale purchases. If, as stipulated by the parties to this proceeding, the Tax Sale Purchaser has complied with all of his duties as a tax sale purchaser, under W. Va. Code 11A-3 et seq, and has timely complied with notice requirements of W. Va. Code 11A-3-60, this Court has the jurisdiction and authority to compel the issuance of two (2) Tax Deeds for property the Petitioner purchased at the Respondent's Tax Sale in Marion County, West Virginia, on June 29, 2016.

23. While the thirty (30) day provision set forth in W. Va. Code 11A-3-59 expired while the delinquent tax payer was before the United States Bankruptcy Court, the six (6) month limitation of 11A-3-60 did not expire, while the Automatic Stay of the Bankruptcy Court was in place. Petitioner timely filed this proceeding under W. Va. Code 11A-3-60 and accordingly this Court does not need to address the Federal Bankruptcy's Tolling Statute, 11 U.S.C. 108(c) that extends filing deadlines an additional thirty (30) days after the Automatic Stay is terminated.

It is, therefore, ORDERED and DECREED as follows:

24. The Respondent, G. Russell Rollyson, Jr., shall forthwith issue, execute and record Deeds to the Petitioner, Kenneth G. Jones, Jr. for State Auditor's Certification 24-6347 and State Auditor's Certification 24-6414, purchased by the Petitioner on June

29, 2016, in Marion County, West Virginia. The Petitioner, Kenneth G. Jones, Jr., shall forthwith tender to the Respondent all statutory fees and costs demanded by the Respondent for the preparation and recording of the two (2) Deeds. Once the Deeds are recorded in compliance with this Order, Counsel for the Petitioner shall deliver to Ron Vernon, Chief Tax Deputy for Marion County, the refund checks issued to Petitioner by the Marion County Sheriff's Office.

25. If the Deeds are not issued, executed and recorded as required by this Order, the Court, pursuant to W. Va. Code 11-3-60, appoints David A. Glance, an Attorney practicing before the Bar of this Court, as a Special Commissioner to issue, execute and record the two (2) Deeds to the Petitioner. If the Special Commissioner must issue the Deeds, the Respondent shall provide a copy of his files on State Auditor's Certification 24-6347 and State Auditor's Certification 24-6414 to the Special Commissioner to provide the Special Commissioner all necessary attachments to the two (2) Tax Deeds.

/s/ David R. Janes
Circuit Court Judge
16th Judicial Circuit

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on Certification 24-6347 by October 17, 2016, and Certification 24-6414 by October 24, 2016.

Southland did not pay the delinquent taxes, but rather filed for bankruptcy protection in the United States Bankruptcy Court for the Northern District of West Virginia on October 17, 2016.

3. Due to Southland's filing for bankruptcy, the State Auditor's Office notified Mr. Jones that it would not issue deeds for Certifications 24-6347 or 24-6414.

4. On March 29, 2017, Mr. Jones, pursuant to West Virginia Code §11A-3-60, filed a petition with the Circuit Court of Marion County for an order compelling G. Russell Rollyson, Jr., Deputy Commissioner of Delinquent and Nonentered Lands for Marion County, West Virginia, to issue and execute the tax deeds.

5. This Court held a hearing on the petition on July 11, 2017, at which time the Court heard the arguments of attorney David A. Glance, counsel for Mr. Jones, and attorney Vincent J. Smith, counsel for the West Virginia State Auditor's Office. After converting the matter to a motion for summary judgment, the Court granted summary judgment in favor of Mr. Jones and ordered G. Russell Rollyson, Jr. to issue, execute and record deeds to Mr. Jones for Certification 24-6347 and Certification 24-6414.

6. On July 27, 2017, attorney Jason E. Wingfield filed a *Motion to Intervene* on behalf of Southland Properties, LLC. In his motion, Mr. Wingfield argues that the petitioner failed to provide Southland notice of the filing of the petition pursuant to Rule 19 of the West Virginia Rules of Civil Procedure, as they are an indispensable party with an interest in the real estate that is subject to this litigation. Mr. Wingfield argues that as a result of the petitioner's failure to notify Southland, it should be allowed to intervene in order to protect and defend its interest in the real property.

7. On July 28, 2017, Mr. Glance filed a *Motion to Strike Pleading*, moving the Court to strike Southland's motion to intervene, arguing that Southland no longer has an ownership

interest in the real estate at issue and as such is not an indispensable party.

8. On August 10, 2017, the Court entered the final Summary Judgment Order following the hearing on July 11, 2017.

9. On September 11, 2017, this Court held a hearing on Southland's *Motion to Intervene*. The Court heard the arguments of Mr. Wingfield and Mr. Glance. Mr. Vincent took no position on behalf of the State Auditor's Office. The Court took the matter under advisement and the issue is now ripe for decision.

CONCLUSIONS OF LAW

1. Chapter 11A Article 3 of the West Virginia Code governs the sale of tax liens and nonentered, escheated and waste and unappropriated lands.

2. Mr. Jones filed his petition pursuant to West Virginia Code §11A-3-60, which provides that:

If the deputy commissioner fails or refuses to prepare and execute the deed as required in the preceding section, the person requesting the deed may, at any time after such failure or refusal, but not more than six months after his right to the deed accrued, apply by petition to the circuit court of the county for an order compelling the deputy commissioner to prepare and execute the deed or appointing a commissioner to do so. If the person requesting the deed fails to make such application within the time allowed, he shall lose his right to the deed, but his rights against deputy commissioner under the provisions of section sixty-seven of this article shall remain unaffected. Any deed executed pursuant to an order of the court shall have the same force and effect as if executed and delivered by the deputy commissioner within the time specified in the preceding section.

3. West Virginia Code §11A-3-60 also provides that "[t]en days' written notice of every such application must be given to the deputy commissioner." This is contrary to Mr. Wingfield's argument that Southland should have been provided notice of the filing of Mr. Jones' petition. It is clear that when read with the preceding section in West Virginia Code §11A-3-59, Southland forfeited ownership of the two properties in question when it failed to redeem

within the time specified by the deputy commissioner. West Virginia Code §11A-3-60 only contemplates the tax sale purchaser and the deputy commissioner as parties to the petition, as it only requires notice to be provided to the deputy commissioner.

4. Furthermore, the legislature has provided remedies relating to tax sales in West Virginia Code §11A-4-1 et seq. that enable Southland to institute a civil action to set aside the sale or deed if certain conditions are met. Not only does the Court find that Southland was not entitled to notice of the petition, but the Court finds that intervention in this case, after the Court has already entered a final order directing the deputy commissioner to execute the deeds, is not proper and that Southland may seek its reprieve from the remedies provided in West Virginia Code 11A-4-1 et seq.

Accordingly, the Court is of the opinion to, and does hereby **ORDER** that the *Motion to Intervene* filed by Southland Properties, LLC, should be, and the same hereby is, **DENIED**, for the reasons stated herein.

Upon entry, the Clerk is directed to prepare and distribute certified copies of this Order to counsel for the petitioner, Attorney David A. Glance; counsel for Southland Properties, LLC, Attorney Jason E. Wingfield; and to Attorney Vincent J. Smith, West Virginia State Auditor's Office, 1900 Kanawha Blvd. E, Bldg 1 Room W 100, Charleston, West Virginia 25305.

/s/ David R. Janes
Circuit Court Judge
16th Judicial Circuit

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