

**LEGAL AND REGULATORY NOTES**

**Vermont Supreme Court Rules that Town Violated Taxpayer's Right to Due Process**

The Supreme Court ruled in February that the Town of Milton violated the due process rights of a taxpayer by conducting a tax sale of his property after a registered notice of the tax sale was returned to the Town as undeliverable and the Town took no further steps to provide notice. *Hogaboom v. Jenkins v. Town of Milton*, 2014 VT 11.

The facts of the case are as follows: Trevor Jenkins of Milton, Vermont, failed to pay his property taxes for two years. The town mailed him three separate delinquent tax notices over the course of 18 months. Finally, in March of 2010, the Town sent Jenkins a "Tax Sale Notice," which stated that Milton's delinquent tax collector had submitted Jenkins' account for tax sale. The document listed the amount due on Jenkins' account, including a calculation of interest due through April 6, 2010. The document did not state that April 6 was the date of the tax sale of the property, nor did it state the time or location of the tax sale.

All of the above notices were sent by first-class mail and, although Jenkins denied having received them, they were not returned to the town. On March 8, 2010, the Town's attorney sent a Notice of Tax Sale to Jenkins by registered mail, return receipt requested. The notice stated that tax sale of Jenkins' property would occur on April 6, 2010, and gave a time and location for the sale. After two attempts failed to deliver this registered letter to Jenkins, the post office returned it to the Town's attorney as unclaimed.

In addition to the registered letter, the Town also placed a notice of tax sale in the Milton land records, at the Town Office, and in the *Milton Independent* newspaper. Jenkins denied seeing any of these notices.

The tax sale was held as planned on April 6, and Plaintiffs Loren and Kathryn Hogaboom purchased the property. The next day, the Town's attorney sent Jenkins a letter by first-class mail stating that the tax sale had taken place, that the property had been purchased, and that Jenkins had one year to redeem the property. This letter was not returned to the Town or its attorney.

Over a year later, when the redemption period had expired without any action from Jenkins, the Town issued a deed to the Hogabooms and the Hogabooms attempted to evict Jenkins from the property. Jenkins denied having received notice of the tax sale, and brought a complaint against the Town for violating his constitutional right to due process.

The Town's defense in the case was that it followed the notice process outlined in 32 V.S.A. § 5252. That statute requires that, prior to a tax sale, a town must file notice of the sale in the Clerk's office, advertise the sale in a local newspaper, send a registered letter to the taxpayer, provide notice to any mortgagees and lien holders, and post notice of the sale in a public place.

The Town also argued that Jenkins should have known that a tax sale was likely after receiving multiple letters about his delinquent taxes. Lastly, the Town argued that any lack of notice was cured when Jenkins was given an opportunity to redeem his property after the sale.

The Court, however, was not swayed by any of the Town's arguments. Most notably, it found that the Town's compliance with the notice process defined in statute was not sufficient to give Jenkins his right to due process before his property was sold.

The due process clause of the U.S. Constitution requires that states and municipalities provide notice and an opportunity for a hearing before depriving an individual of life, liberty, or property. In the context of a tax sale, due process would seem to require notification to a property owner about the potential sale of his property, followed by an opportunity for that person to prevent all or part of the sale. Until recently, it was assumed that due process was afforded when a town followed the steps articulated in 32 V.S.A. §§ 5252 and 5260 (send and post notice before the sale, and provide an opportunity for redemption after the sale). However, it is clear after the *Hogaboom* case that towns must sometimes take additional steps to provide notice before sale. “[O]nce notice of a tax sale is returned unclaimed, a town must take additional reasonable steps to apprise the taxpayer of the impending tax sale before the sale occurs.” *Hogaboom* at ¶27.<sup>1</sup>

So what should a town do when a notice of tax sale is returned as undeliverable? Take at least one of the “additional reasonable steps” articulated in the *Hogaboom* case:

- re-send the notice of tax sale by regular mail;
- post the notice on the taxpayer's front door (when safe to do so);
- address otherwise undeliverable mail to “occupant”; or
- have the sheriff serve the notice.

Remember: an individual tax payer's right to due process does not require that he or she actually receive notice of a tax sale. If that were the case, the tax payer could prevent a tax sale by merely refusing to accept registered mail. What it does require is an effort to provide notice that is “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of [an] action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2012-367.html>

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<sup>1</sup> Notably, the League offered this same advice in a 2006 newsletter article, in the wake of a similar case before the U.S. Supreme Court (*Jones v. Flowers*, 547 U.S. 220 (2006)).