

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**May 22, 2023**

**Opinion No. 23-008**

**Authority of Court Clerk to Require a Deposit to Bid at a Delinquent Tax Sale**

---

**Question 1**

Is a court clerk authorized to require a deposit as a condition of bidding at a delinquent tax sale?

**Opinion 1**

No. As a public officer a court clerk has and can exercise only the authority that is expressly conferred on the clerk by statute or necessarily implied from the powers granted by statute. But no Tennessee statute expressly—or by necessary implication—authorizes a court clerk to require a deposit as a condition to bidding at a delinquent tax sale.

**Question 2**

If a court clerk is authorized to require a deposit as a condition of bidding at a delinquent tax sale, is there a limitation on the amount the court clerk is authorized to require?

**Opinion 2**

In light of Opinion 1 this question is moot.

**ANALYSIS**

A delinquent tax sale is the judicially ordered public sale of property for the purpose of collecting unpaid taxes owed on the property. Tennessee’s delinquent tax sale process is prescribed by statute. *See* Tenn. Code Ann. §§ 67-5-2501 to -2516.

The delinquent tax sale—basically an auction at which the public is invited to bid on the property—is conducted by the clerk of the court that orders the sale. *Id.* § 67-5-2502(a)(6) (referring to the clerk or a special master “conducting the sale” of the property). Generally, any person not disqualified by statute may bid at a delinquent tax sale. 85 C.J.S. *Taxation* § 1266 (2023). Political subdivisions are also authorized to bid. Tenn. Code Ann. § 67-5-2508(a)(1). There is no statutory requirement that to qualify to bid a potential bidder must make a deposit.

The clerk’s authority and responsibilities in conducting the sale are delimited by statute. Once the court orders the sale, the clerk is responsible for advertising the sale to the public and for providing notice of the sale to the owner(s) of the property to be sold. *Id.* § 67-5-2501. The clerk

determines the minimum bid, which is to include the amount due for taxes, penalties, interest, and costs of administering the sale. *Id.* § 67-5-2501(a)(2), (b)(2). And, with some exceptions,<sup>1</sup> the clerk must bid that minimum on behalf of the taxing entity if no other bidder offers the minimum or larger bid. *Id.* § 67-5-2501(a)(2).

The court must order the sale of the property for cash. *Id.* § 67-5-2501(a)(1). The clerk, either alone or along with the county trustee, collects any payments made towards the taxes at issue during the proceedings. Tenn. Code Ann. §§ 67-5-2404(c), 67-5-2421. Once the auction has concluded, the clerk files a report of sale for the judge’s confirmation and forwards notice of the sale to the register of deeds. *Id.* § 67-5-2501(c). The clerk is required to provide annually, upon request, a complete list of unpaid taxes with their associated properties and tax years at issue in delinquent tax cases in the clerk’s court. *Id.* § 67-5-2403. But the clerk expressly has no duty “to prepare petitions, complaints, summonses, notices or orders for the prosecution of tax enforcement suits.” *Id.* § 67-5-2410.

In short, Tennessee’s delinquent tax sale statutes do not give the clerk any authority to require a deposit as a prerequisite to bidding at a sale—in fact, the statutes make no reference at all to bidding deposits. The clerk’s responsibilities and authority with respect to delinquent tax sales are limited by statute to receiving and distributing money during the process, providing notices and keeping records, reporting the sale to the judge and other officials, and, in certain delineated circumstances, bidding at the auction on behalf of the taxing entity.

A court clerk is a public officer. Generally, “[p]ublic officers have, and can exercise, . . . only such power and authority as are expressly or clearly conferred by constitutional or statutory authority or necessarily implied or inferred from the powers granted.” 67 C.J.S. *Officers* § 323 (2023). Moreover, “express statutory powers cannot be broadened by implication,” nor “may public officials expand those powers by their own authority.” *Id.*

Under Tennessee law in particular, a court clerk “is a mere ministerial officer and cannot act except under the conditions prescribed by the statute.” *Bailey v. Schubert*, 315 S.W.2d 249, 252 (1958); *see also State v. Brady*, 31 Tenn. 36, 37 (1851) (because the clerk of the circuit court is a ministerial officer of the court, the clerk could not administer an oath outside the presence of the court when the statute “confer[s] authority upon the clerk” to administer oaths only in the presence of and at the direction of the court). And specifically in the context of Tenn. Code Ann. § 67-5-2706, which is part of the delinquent tax sale statutory scheme, the Tennessee Court of Appeals found that the clerk could not be required to carry out an act that the statute did not “*expressly*” authorize or require the clerk to do. *Jones v. Anderson*, 250 S.W.3d 894, 897 (Tenn. Ct. App. 2007) (declining to order the clerk to act “[i]n the absence of an express [statutory] grant of authority”) (emphasis in the original text).

---

<sup>1</sup> For example, the clerk may not offer a bid if the county legislative body has determined that no bid should be made on behalf of the county because the property poses an environmental risk. Tenn. Code Ann. § 67-5-2501(a)(2).

In sum, the court clerk's role in conducting a delinquent tax sale is limited to the authority and responsibilities expressly given to the clerk by statute. Tennessee's delinquent tax statutes do not give the clerk any authority to require a deposit as a prerequisite to bidding at a delinquent tax sale, nor can any such authority be necessarily implied from the circumscribed powers granted the clerk by statute. A court clerk, therefore, has no authority to require a deposit as a condition to bidding at a delinquent tax sale.

JONATHAN SKRMETTI  
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN  
Solicitor General

Requested by:

The Honorable Brock Martin  
State Representative  
425 Rep. John Lewis Way, Suite 652  
Nashville, Tennessee 37243