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To: Betsy Keller

From: Chris Sullivan

A handwritten signature in black ink, appearing to be "Chris Sullivan", is written over the "From:" line.

Date: September 13, 2020

Re: OP-20- Authority to conduct online auctions

CC: Hon. Ricardo Samaniego, Jo Anne Bernal, Patsy Lopez, Christina Sanchez, Nichole Ruiz

QUESTIONS:

1. Can the County hold online auctions on foreclosed properties?
2. What powers do the Commissioners Court and Sheriff have, respectively, in relation to these possible sales?

SHORT ANSWERS:

1. The County can hold online auctions only for properties that have been foreclosed upon via a tax lien under Section 34.01 of the Texas Tax Code. This option is not available for properties foreclosed upon by writs of execution (generally the result of a third party lawsuit) under Chapter 34 of the Texas Civil Practice and Remedies Code.
2. Both the Commissioners Court and Sheriff have some authority in relation to this topic. In order for online auctions of property foreclosed via tax liens to take place, the Commissioners Court must authorize online auctions. Once online auctions are

authorized by the Court, the Sheriff has the authority to decide whether or not to sell these properties via online auctions.

FACTS:

Currently the County conducts sales of real and personal property that have been foreclosed upon via Chapter 34 of the Texas Tax Code (tax liens) and Chapter 34 of the Texas Civil Practice and Remedies Code (writs of execution). A question has been posed regarding whether these sales can be done via online auction.

ANALYSIS:

There are three types of sales that the Sheriff's Office conducts:

1. Tax Lien Sales of Real Property under Tax Code Chapter 34
2. Real Property sales subject to writs of execution under Civil Practice and Remedies Code (CPRC) Chapter 34
3. Personal Property sales subject to writs of execution CPRC Chapter 34

Of these sales, the Tax Lien sales are the public auctions that generate a great deal of public attendance and interest. They are currently being held in Liberty Hall with appropriate social distancing and health protocols being followed. Conversely, sales that are subject to writs of execution generally generate little interest and are frequently settled ahead of time with the individual who received the civil judgment from which the writ of execution stemmed.

Texas Tax Code 34.01 (a-1) explicitly allows for Tax Lien Real Property Sales via online auction. Section 34.01 (r-2) states when these online auctions need to occur calendar/timewise.

The CPRC contains no authority for conducting online sales of property seized under a writ of execution.

The bill allowing online auctions for Tax Lien Sales (SB 1452 – 2015 Regular Session) was silent on CPRC sales and no bill has ever been filed seeking to move the CPRC sales online.

As such, only Tax Lien Sales may be conducted online. This view is backed up by KP-0269 in relation to the inability to conduct an online auction without express authority in scenarios where restrictions are placed upon the sale. Chapter 34 of the CPRC imposes restrictions similar to those found in KP-0269 that resulted in the inability to conduct an online auction.

Texas Tax Code 34.01 (a-1) uses the permissive word "authorize," rather than something mandatory like "direct," in relation to the power of the Commissioners Court in relation to online auctions. As such, the Tax Code is clear that a Sheriff cannot conduct online auctions without the

Commissioners Court first authorizing them. However, in the event that the Commissioners Court has authorized them, the decision of whether to actually conduct online auctions fully remains within the purview of the Sheriff as the “officer charged with selling property under this section.”

Texas Tax Code 34.01 (a-1) “The commissioners court of a county by official action may authorize the officer charged with selling property under this section to conduct a public auction using online bidding and sale. The commissioners court may adopt rules governing online auctions authorized under this subsection. Rules adopted by the commissioners court under this subsection take effect on the 90th day after the date the rules are published in the real property records of the county.”

This interpretation of the commissioners court’s authority is further bolstered by contrasting the language in Sections 34.01 (sales of property foreclosed by tax lien), with the language of Texas Tax Code 34.05 (d) – Resale by Taxing Unit. In the specific circumstance that a county is reselling a property that it actually bought (rather than foreclosed upon via a tax lien), the code gives the commissioners court the power to “direct,” rather than merely “authorize,” that online auction procedures be used.

Texas Tax Code 34.05 (d) “Except as provided by this subsection, all public sales requested as provided by Subsection (c) must be conducted in the manner prescribed by the Texas Rules of Civil Procedure for the sale of property under execution or, if directed by the commissioners court of the county, in accordance with Section [34.01](#)(a-1) and the rules adopted under that section providing for public auction using online bidding and sale....”

RESPONSE TO SUBMITTED ISSUE:

The Sheriff cannot use online auction procedures absent the authorization by the Commissioners Court. The Commissioners Court cannot direct that tax lien sales be completed via online auction. If online auctions are authorized by the Commissioners Court for tax lien sales, the Sheriff has the power to determine whether or not such sales will be conducted via online auction.