



OPINIONS
OF THE
ATTORNEY GENERAL
OF CALIFORNIA

Opinion No. 81-209—January 7, 1982

SUBJECT: TAX DEED SALE (INTEREST)—A person who has been awarded the excess proceeds from a tax deed sale, after a judicial hearing as provided in Rev & Tax C § 4675, is not entitled to interest on that award.

Requested by: COUNTY COUNSEL, SOLANO COUNTY

Opinion by: GEORGE DEUKMEJIAN, Attorney General
John T. Murphy, Deputy

The Honorable Milton Goldinger, County Counsel, County of Solano, has requested an opinion on a question which we have rephrased as follows:

Is a person who has been awarded the excess proceeds from a tax deed sale, after a judicial hearing as provided in Revenue and Taxation Code section 4675, entitled to interest on that award and, if so, how is that interest calculated?

CONCLUSION

A person who has been awarded the excess proceeds from a tax deed sale, after a judicial hearing as provided in Revenue and Taxation Code section 4675, is not entitled to interest on that award.

ANALYSIS

Under Revenue and Taxation Code section 3691,¹ the tax collector is empowered to sell all or any portion of the tax-deeded property. The disposition of the proceeds of such a sale is prescribed in sections 4671-4676. As part of this statutory distribution plan, section 4674 concerns "excess proceeds":

¹ Unless otherwise indicated, all further statutory references will be to the Revenue and Taxation Code.

196 Cal. App. 2d 535, 543.) We do not believe that the award of excess proceeds by a superior court, under section 4675, is an award of a monetary sum assessed against a wrongdoer for commission of a legal wrong. By comparison, *Tripp v. Swoap*, *supra*, 17 Cal. 3d 671, arose out of administrative mandamus action challenging as unlawful the denial of welfare benefits; *Sunders v. City of Los Angeles*, *supra*, 3 Cal. 3d 252, was generated by an action for declaratory judgment and writ of mandate attacking as unlawful the refusal to fix salaries and wages; *Benson v. City of Los Angeles*, *supra*, 60 Cal. 2d 355, was a declaratory judgment action based on the alleged unlawful failure to pay pension benefits. Section 4675, on the other hand, is a special proceeding to determine from multiple claims the priority and extent of the claimants' interests in the excess proceeds. There is no vested right to the excess proceeds or any part thereof until the court decides the matter. We believe, therefore, that the hearing is not a damage action within the meaning of Civil Code section 3287(a) allowing for the recovery of prejudgment interest against the governmental entity.

We conclude that a claimant awarded the excess proceeds from a tax deed sale is not entitled to interest thereon.

Opinion No. 81-802—January 7, 1982

SUBJECT: RIGHT OF PRIVACY—The constitutional right of privacy of a customer of a California financial institution, as defined in Gov. C. § 7465(a), does not prohibit the institution from releasing the customer's name and account number to a district attorney without a search warrant or other legal process.

Requested by: DISTRICT ATTORNEY OF NEVADA COUNTY

Opinion by: GEORGE DEUKMEJIAN, Attorney General

John T. Murphy, Deputy

The Honorable John H. Darlington, District Attorney of Nevada County, has requested an opinion on the following question:

Does a customer of a California financial institution, as defined in Government Code section 7465(a), have a constitutional right to privacy which would prohibit the institution from releasing the customer's name and account number to a district attorney without a search warrant or other legal process?

CONCLUSION

The constitutional right of privacy of a customer of a California financial institution, as defined in Government Code section 7465(a), does not prohibit the institution

"Any excess in the proceeds deposited in the delinquent tax sale trust fund remaining after satisfaction of the amounts distributed under Sections 4672, 4672.1, 4673, and 4673.1 shall be retained in such fund on account of, and may be claimed by parties of interest in the property as provided in, Section 4675. At the expiration of one year following the execution of the tax deed to the purchaser, any excess proceeds not claimed under Section 4675 shall be distributed as provided in paragraph (2) of subdivision (a) of Section 4673.1"

Section 4675 allows any party of interest in the property to file with the county a claim for excess proceeds at any time prior to the expiration of one year following the recordation of the tax collector's deed to the purchaser. Moreover, upon the expiration of one year from such recordation, the excess proceeds may be distributed to claimants on order of the board of supervisors. The statute further provides:

"In the event more than one party of interest . . . files claims for the excess proceeds as provided herein, the superior court shall give all claimants opportunity for a hearing to establish the priority and extent of their claim following a period of at least 90 days after written notice has been given to each claimant."

We are presented with a situation of a superior court making findings in favor of a claimant, and of the board of supervisors, pursuant to those findings, awarding that claimant the principal amount of the claim. We are asked whether the claimant, in these circumstances, is entitled to interest on the principal amount and, if so, the period of time over which the interest is calculated. There is no statutory provision for the payment of interest on excess proceeds from sales of tax deeded property.²

The general rule is that there must be a specific statutory provision to create governmental liability for interest. (*Gregory v. State of California* (1948) 32 Cal. 2d 700, 703; *Ball v. County of Los Angeles* (1978) 82 Cal. App. 3d 312, 317 cert. den. 439 U.S. 1116.) Consequently, since the Legislature has not provided for the payment of interest on excess proceeds from a sale of tax-deeded property, there is no obligation to do so. However, we must examine Civil Code section 3287(a) to determine if that section allows recovery of interest in the situation under discussion. Civil Code section 3287(a) provides:

"Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any such debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state."

² Section 5150 allows a successful plaintiff in an action to recover taxes to obtain interest at 6 percent per annum from the date of filing of the claim to the date of entry of judgment, with such accrued interest being included in the judgment. Section 5151 allows 9 percent per annum interest in other specific situations.

This statute was examined in *Tripp v. Swoap* (1976) 17 Cal. 3d 671, a case involving prejudgment interest on withheld welfare benefits. The court stated, at pages 683-684:

"First, the court appears to have misapplied the general rule that interest cannot be recovered against a state or municipality. While it is true that governmental entities traditionally have been immune from liability for interest, Civil Code section 3287 as amended in 1959 provides a clear statutory exception to the general rule, and this exception has been consistently recognized by this court as imposing liability for interest on such entities. (E.g., *Sanders v. City of Los Angeles*, *supra*, 5 Cal. 3d at p. 262; *Benson v. City of Los Angeles*, *supra*, 60 Cal. 2d 355, 364.)"

Initially, we observe that section 3287(a) concerns interest on recovered damages in judicial actions. Actions to recover salary increases, pension payments, and welfare benefits are deemed actions for damages. (*Tripp v. Swoap*, *supra*, 17 Cal. 3d 671, 682 fn. 12; *Sanders v. City of Los Angeles* (1970) 3 Cal. 3d 252, 262-263; *Benson v. City of Los Angeles* (1963) 60 Cal. 2d 355, 365-366; see also *California State Employees' Assn. v. Cory* (1981) 123 Cal. App. 3d 888, 891.) However, we do not view the hearing in Superior Court, provided by section 4675, as an action for damages. This judicial proceeding occurs when more than one party of interest files a claim and each party is then afforded an "opportunity for a hearing to establish the priority and extent of their claims. . . ."

First, this hearing is not an "action." An action is defined in Civil Code section 22:

"An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."

Every other remedy is a special proceeding. (Civil Code section 23.) Any court proceeding which is not under the common law and equity practice, and is a creature of statute, is a special proceeding. (*Kinder v. Superior Court* (1978) 78 Cal. App. 3d 574, 581; *In re Helen J.* (1973) 31 Cal. App. 3d 238, 244.) The determination of the disposition of excess proceeds of a tax deed sale by a judicial hearing is analogous to the disposition of estate assets by probate hearing, and probate matters fall within the category of special proceedings. (*Coberly v. Superior Court* (1965) 231 Cal. App. 2d 685, 690.) Secondly, if the hearing is an action it is not an action for damages. Civil Code section 3281 defines damages:

"Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages."

Damages are a form of relief afforded to an injured party for the injury suffered, i.e., the amount of money which will compensate the injured party for all the detriment which was proximately caused by the unlawful act of defendant. (*Zikratsh v. Stillwell* (1961)