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ALIEN OWNERSHIP OF OKLAHOMA URBAN REAL PROPERTY

By Steven L. Barghols

In developing the issue of corporate ownership, this article is limited by design to consideration of the question of whether an Oklahoma corporation or another U. S. corporation, whether or not the latter is domesticated in Oklahoma, when either is controlled by alien shareholders, may legally own urban real estate in Oklahoma.

I.

Until very recently, an attorney could confidently and competently render a useful opinion to a client with respect to the issue of non-resident alien ownership of Oklahoma real property situated in an incorporated city or town. Such an opinion would be based upon pertinent sections and provisions of the Oklahoma Constitution and the Oklahoma Statutes, and two recent Oklahoma Attorney General Opinions, but would be **subject,** of course, to the all too common but essential caveat that there is no controlling and little analogous Oklahoma decisional authority supporting such opinion. The attorney's work product would generally include the following observations and conclusions:

1. Constitutional and Statutory Provisions. Article XXII, Section 1, of the Oklahoma Constitution and the statutory provisions enacted by the Oklahoma Legislature in 1910 pursuant to constitutional directive (Title 60 O.S. 1971, §§121-127) proscribe (with certain specific exceptions) an "alien" from acquiring title to or owning land in Oklahoma under penalty of escheat.[1]

2. Constitutionality of the Alien Land Laws. Similar state provisions have been held to be valid by the United States Supreme Court.[2] While the constitutionality of such state restrictions has been vigorously challenged by both litigants and commentators on several grounds, including denial of due process and equal protection of the law, federal preemption in the area of foreign affairs (e.g., treaties and reciprocity agreements), and interference with interstate commerce, the issue of the constitutionality of Oklahoma's alien land laws has, as a matter of economy, been excluded from the scope of this article.[3]

3. Definition of "Alien." The term "alien" is both constitutionally and statutorily defined as "any person who is not a citizen of the United States."[4]

4. Statutory Exceptions. As indicated above, there are certain exceptions to the statutory prohibition against alien ownership of Oklahoma real property.

(a) The restrictions are not applicable to aliens who were owners of Oklahoma real property at the time the statutes were enacted (1910).[5]

(b) Those laws do not apply to aliens who are or shall become bona fide residents of the State. A resident alien landowner who ceases to be a "bona fide inhabitant" is permitted five years from the time he ceases to be a bona fide resident to divest himself of title to such land.[6]

(c) A non-resident alien who acquires title to Oklahoma real property by devise, descent or by purchase at a lien foreclosure sheriff's sale (where the purchase is made "under any legal proceeding foreclosing liens in favor of such alien") is also permitted five years from the date of such acquisition to divest himself of such title.[7]

5. Self-Executing Character of Alien Land Laws. With one notable exception, the statutory prohibition against alien ownership does not appear to be

(EDITOR'S NOTE: This article is based on a paper presented by the author at the June 9, 1979, meeting of the Oklahoma City Title Attorneys.)

"self-executing" as that term is commonly understood.[8] In the situation in which an alien conveys title to real property to another alien or a citizen of the United States in trust intending to evade the statutory prohibition, Section 124 of Title 60 provides that ". . . such conveyance shall be null and void, and any such lands so conveyed shall be forfeited and escheated to the State absolutely." However, Section 124 also expressly permits any alien who holds title to Oklahoma real property in contravention of the alien land laws to convey fee simple title to that land at any time prior to the institution of escheat proceedings by the State.

6. Escheat Enforcement Procedure. Sections 125-127 of Title 60 set forth the procedure to be followed by the State in enforcing escheat of Oklahoma real property held in contravention of the alien land laws.

7. Procedural Safeguards Afforded Non-Resident Alien. Section 124 of Title 60 provides that, irrespective of whether land is held by an alien in contravention of the provisions of Title 60, an alien ". . . may nevertheless convey the fee simple title thereof at any time before the institution of escheat proceedings . . ." (limited by the self-executing "in trust" or "circumvention transfer" proviso discussed above). Section 125 of Title 60, empowering the Oklahoma Attorney General or the district attorney of any county in which land held by a non-resident alien is situated to institute an escheat proceeding on behalf of the State, requires that the alien to be named as defendant in such proceeding be given 30 days' notice of the state official's intention to sue. Although it is obvious that, as in the case of any forced sale, general awareness of the issuance of the 30 days' notice would have a chilling effect on the sale price of the land made the subject of such notice, that "grace period" would at least permit the alien so noticed to divest himself of the land otherwise to be condemned by conveying same to a good faith purchaser for value and thereby avoid escheat of that land.

Section 124 makes clear the alien's right to convey good title prior to initiation of the escheat proceeding but does not expressly authorize compliance by conveyance after initiation of the proceeding but before sheriff's sale. This fact should not be found to suggest that the defendant alien may not convey valid title to the subject land after the 30-day "notice period" preceding the commencement of the escheat proceeding has elapsed. Violation of the statutory restrictions on alien ownership results in forfeiture only in the circumvention transfer situation specifically addressed by Section 124. Otherwise, the State does not acquire title to the subject land unless and until it is the purchaser at the sheriff's sale provided by Section 127. Absent such purchase, the State's only interest in the subject land is the contingent right to collect the proceeds from the sale thereof which, when not successfully claimed by the former alien owner, irrevocably vest in the State one year following the sheriff's sale.

Arguably, a good faith conveyance for value by the alien owner after the 30-day "notice period" (subject to payment of costs), but before the sheriff's sale, effectively accomplishes the object of the statutory prohibition against alien ownership in that the alien no longer holds title to the subject land. This right of conveyance enjoyed by the alien prior to the sheriff's sale **should** be considered analogous to the statutory right of redemption enjoyed by a mortgagor/judgment-debtor prior to sheriff's sale of the mortgaged premises.

As mentioned above, an additional "safeguard" afforded the non-resident alien is found in Section 127 which provides that the proceeds of a sale of land condemned by the escheat proceeding and sold under court order are to be held by the court clerk of the court rendering such judgment for the benefit of the alien owner of such lands. Also, the defendant in any such escheat proceeding may, before final judgment therein, prove to the district court that he has conformed to or complied with the alien land laws, at which time the escheat proceeding will be dismissed on the condition that the defendant pay the costs of that proceeding and reasonable attorney's fees. Thus, if the alien should in good faith establish residency in Oklahoma during the course of the proceeding, escheat could be prevented. (See the discussion in Note 9, below, addressing the possible effect of domestication by an alien corporation prior to or during the course of the escheat proceeding.)

8. Corporation As Non-Resident Alien Within Coverage of Act. Title 60 O.S. 1971, §121, defines the term "alien" as "any person who is not a citizen of the United States." As noted above, whether an alien corporation (i.e. one formed under the laws of another nation) is proscribed from acquiring, holding or conveying title to Oklahoma real property, and what effect the domestication in

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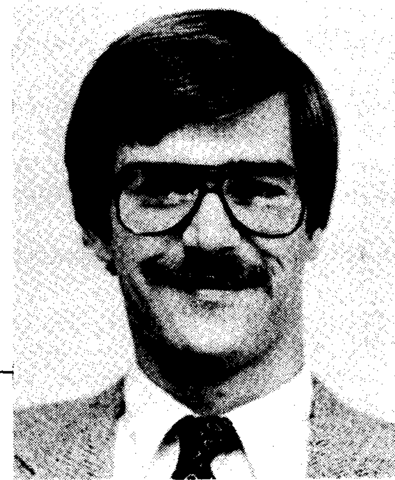

Oklahoma of such alien corporation may have on the alien status of such entity are issues outside the scope of this article.[9]

Application of Oklahoma's alien land laws involves a two-tier inquiry. First, is the individual or corporation (or other entity) an alien? Only if this question is answered affirmatively is there need to further determine whether the alien has established a bona fide residence in or is a bona fide inhabitant (See Note 9, herein) of Oklahoma.

Perhaps it is the Oklahoma Business Corporation Act,[10] and **not** Oklahoma's alien land laws, which provides outcome-determinative authority as to the question of whether a domestic or domesticated (chartered in another state) corporation controlled by non-resident aliens is statutorily **permitted** to acquire, hold and convey title to Oklahoma non-rural land. Pertinent provisions of that Act,[11] by necessary implication, **authorize** a domestic or domesticated corporation to hold such rural land as is "necessary and proper for carrying on the business" for which it has been formed or domesticated (assuming such matters are properly within the scope of the corporation's purposes under its charter). However, those provisions place **no restrictions** on the ownership of non-rural land by any such entity.

Because (i) the Oklahoma Business Corporation Act does not by its terms require that shareholders of a domestic or domesticated corporation be U.S. citizens,[12] and (ii) Section 1.20 of Title 18 (limiting the amount of real estate which may be owned, held or taken by a corporation) was enacted more recently (1947) than the alien land laws (1910), the doctrine of strict statutory construction arguably requires that the fact of lawful corporate formation or domestication be held to control over the question of whether non-resident aliens hold some, less or more than 50 percent, or all of the stock of such corporation.

Unfortunately, there is no judicial authority in Oklahoma which addresses the question of the validity of ownership of land in Oklahoma by a domestic or foreign corporation which is controlled by alien shareholders. In considering whether such a corporation would or should be considered an alien for purposes of holding title to land under Oklahoma's alien land laws, and bearing in mind that such laws proscribe ownership only by a non-resident alien, attention is directed to the well-settled general rule that the "citizenship" of a corporation is the state or country under which it is created;[13] despite the fact that its shareholders may be citizens or residents of another state or country.[14]

Accordingly, a corporation chartered under the laws of, say, Delaware, although not an **Oklahoma** resident, should, as a logical result, be deemed a United States "citizen," even though controlled by non-resident aliens. Ownership by such foreign corporation of Oklahoma urban real estate would arguably not violate the express language of this State's alien land laws since those laws apply only to (non-resident) aliens, **unless** such indirect alien ownership were deemed violative of such provisions. In any event, it is certainly the law in Oklahoma that, subject only to constitutional limitations, a corporation, either domestic or domesticated,[15] is a creature of statute and, as such, is subject, as would be any state resident, to state supervision and control including, *inter alia,*

amenability to service of process, state taxation, exercise of the state's police powers, etc.

An obvious concern and one considered by other jurisdictions is whether the ownership of real estate by a corporation formed in the United States, the stock of which corporation is held by non-resident aliens, could be construed as an attempt to evade the prohibitions of Oklahoma's Constitution and statutes. At least one court has characterized ownership of land by a corporation controlled by non-resident alien shareholders as a circumvention of the "intent" of its state's alien land laws.[16] Because there is no judicial authority in Oklahoma which has addressed the question of whether a domestic or foreign (formed under the laws of another state) corporation controlled by non-resident aliens may validly hold title to Oklahoma real property, it is necessary to rely on reasonable interpretation and construction of the express language of our constitutional provision and the statutes enacted pursuant to its direction.

II.

The recent "Report" of the Oklahoma Attorney General entitled "Non-Resident Alien Ownership of Land in Oklahoma: Report of the Oklahoma Attorney General," dated May 1, 1979, has injected an element of uncertainty into some of the observations and conclusions developed above. That Report was prepared in response to Enrolled Senate Resolution No. 11, which provided in pertinent part:

> "**SECTION 1.** The Oklahoma Senate calls upon every citizen with knowledge of non-resident alien land purchases to report to their local District Attorney and to the Attorney General. The Attorney General is directed to conduct an investigation into foreign land investment in Oklahoma and to report to the Oklahoma Senate by May 1, 1979. No action shall be taken against any non-resident land purchaser who has rights by treaty to purchase and own land within the United States."

The now controversial Report may be briefly summarized as follows:

1. It was the intent of the framers of the Oklahoma Constitution to promote rural "home-ownership" and restrict alien ownership of Oklahoma agricultural land.

2. Large scale investment by "foreigners" in the United States is contributing to inflationary real estate prices, sheltering profits from state and federal taxes, causing the Gross National Product to decline and unemployment to increase, and ". . . is hastening the demise of the family farm. In doing so, it may be working a quiet revolution, systematically replacing such farms with the remote-controlled corporate structure."

3. Oklahoma's alien land laws have not been vigorously enforced during the almost 70 years since their enactment.

4. The effect of 60 O.S. 1971, § 121, ". . . would appear on its face to render title to land conveyed in violation thereof **void and not merely voidable** . . . Where the non-resident alien acquires title by any means other than those set forth in the statute [by devise, descent or by purchase at a lien foreclosure sheriff's sale (Section 123 of Title 60)] the title purportedly vested in such non-resident alien is **void,** and the five year statutory privilege does not apply." (Emphasis supplied)

5. Oklahoma's alien land laws are constitutional and do not violate federal treaties with foreign nations [citing only a Wisconsin Supreme Court case].

The Report concludes with an exhibit identifying some 45 corporations allegedly involved in over 62 real estate transactions reported in Oklahoma County. Those corporations are identified as being "suspect" "because the identity and nationality of the corporate shareholders have not been determined" and they ". . . have reported, or are suspected of having, the bona fide address of their board of directors or corporate officers in a foreign country."

Assuming that many of the corporations identified by the Attorney General are either domestic or foreign, but not alien, the clear inference created by listing those "suspect" corporations is that the Attorney General considers control by non-resident alien shareholders to be tantamount to non-resident alien status and thus in violation of the alien land laws. In addition, the Report is contradictory in that, while the text of the Report discusses ownership of rural farm land, the

"The 'indirect violation' statement seemingly disregards the Oklahoma and general rule that title to corporate property vests in the corporation and **not** *in the individual shareholders of the corporation."*

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referenced exhibit includes transactions which almost certainly involved urban real estate.

On September 12, 1979, the Oklahoma Attorney General, in Opinion No. 79-286, addressed to Mr. Jay Casey, Director of the Department of Industrial Development, opined on the legality of an alien corporation acquiring and holding title to real property situated in Oklahoma. Opinion No. 79-286 is parallel to the Attorney General's earlier Opinion No. 76-253 (dated August 4, 1976), which, relying on 25 O.S. 1971, §16, concluded that a foreign country is a "body politic" within the statutory definition of the word "person." Thus, Opinion No. 79-286 states the logical extension of that interpretation in concluding that an alien corporation, as a "body corporate" under that same statute, should also be considered a "person" and therefore subject to the restrictions on non-resident alien ownership of land. Opinion No. 79-286 expressly "withdraws" earlier Attorney General Opinion No. 74-214 (dated January 30, 1975), which, citing only Article XXII, Section 2, of the Oklahoma Constitution, strongly suggested that the only restrictions on the ownership of Oklahoma real property by a corporation controlled by aliens (whether it be domestic or a domesticated U.S. or alien corporation) would be those relating to the ability of such corporation to acquire, hold or deal in **rural** lands.

Opinion No. 79-286 is highly troublesome from a legal standpoint in that it apparently confuses and treats in an identical manner ownership by a "foreign" corporation (one formed under the laws of another state) and an "alien" corporation (one formed under the laws of another nation). Of course, Oklahoma's alien land laws apply only to ownership of Oklahoma land by a non-resident alien, i.e. "any person who is not a citizen of the United States." Opinion No. 79-286 fails or declines to address: (i) the authority cited above standing for the proposition that the "citizenship" of a corporation is the state or country under which that entity is created, despite the fact that its shareholders may be citizens or residents of another state or country; and (ii) the discussion in Note 9, herein, dealing with the possible effect of an alien corporation properly domesticating in Oklahoma.

Equally troublesome is the fact that the text of Opinion No. 79-286 concludes with the following caveat:

> "**This opinion does not consider the status of title to land conveyed to a corporation which is controlled by alien shareholders.** It is axiomatic, however, that a person cannot accomplish a purpose indirectly which is prohibited by law. Article 22, §1, expressly prohibits acquisition of Oklahoma land by an alien. That prohibition cannot be avoided by indirectly acquiring ownership through a corporate device or other legal entity. Ownership embraces, in addition to legal title, all of the incidents and rights constituent therein. The corporate form cannot be utilized to shield one who has acquired such incidents and rights in violation of the prohibition." (Emphasis supplied)

The "indirect violation" statement seemingly disregards the Oklahoma and general rule that title to corporate property vests in the corporation and **not** in the individual shareholders of the corporation.[17] Section 121 of Title 60 expressly permits non-resident aliens to hold personal property (e.g. corporate stock), but only to the extent that personal property may be owned by United States

citizens under the laws of the nation of which such aliens are citizens or by treaty of such nation with the United States. Because Opinion 79-286 expressly states that it ". . . does not consider the status of title to land conveyed to a corporation which is controlled by alien shareholders," the "indirect violation" language of the Attorney General is purely dictum and does not have the force of law. Notwithstanding the fact that Opinion No. 79-286 expressly declines to resolve the "alien control" issue, the predilection of the Attorney General is unmistakably clear.

Of course, the "indirect violation" statement begs the question of the effect of control of a domestic or domesticated U.S. corporation by alien shareholders in that it simply states a conclusion without citing supporting authority or rationale. In addition, it seemingly overlooks the encyclopedic authority cited earlier in Opinion No. 79-286 that ". . . a corporation's character as an alien depends on the fact that it owes its existence to the laws of another sovereignty," i.e. another nation.

Finally, the opinion ignores the fact that the only restriction imposed by Oklahoma statutory law on shareholder control of a corporation holding title to Oklahoma land is that prescribed by Oklahoma's Farming or Ranching Business Corporation Act (18 O.S. Supp. 1978, §§951 thru 956). That legislation provides that no "foreign" corporation may be "formed or licensed" under the Oklahoma Business Corporation Act "for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching;" a domestic corporation formed under the Oklahoma Business Corporation Act may engage in such activities provided, among other things, it has no more than ten (10) shareholders (with no residency requirement stated).

The inference created by the fact of this single statutory restriction is that the character of shareholder control of corporations other than those engaged in farming or ranching is irrelevant and not restricted by statute. It is significant in the context to note that, under 18 O.S. 1971, §§1.34(c) and 1.43(b), directors and officers respectively, of an Oklahoma corporation are not required to be residents either of Oklahoma or of the United States unless the articles of incorporation or by-laws provide otherwise.

With respect to the question of the persuasive value of Attorney General Opinion Nos. 76-253 and 79-286, it should be noted that the effect of an Attorney General Opinion in Oklahoma is only to bind public officials with notice of the opinion until a contrary judicial decision is rendered.[18] Of course, the only persons who may institute escheat proceedings under 60 O.S. 1971, §§121-127, are the Attorney General and the county district attorneys, all of whom are public officials bound by the Attorney General's opinions.

Oklahoma Attorney General Opinion No. 79-286 has resulted in astonishment, confusion and a storm of criticism by the director of the State Industrial Development Department, the U.S. State Department, certain foreign embassies, Oklahoma real estate developers, investors and business leaders, and the State's legal community.[19] Governor George Nigh has called for "quick actions through the courts or legislature . . . to avoid drying up foreign investments in the state."[20] Contributing to the overall confusion is the further (press conference) statement by Assistant Attorney General John Paul Johnson that the Attorney General's office is ". . . not interested in applying the opinion against anyone who is investing in an enterprise and creating jobs," but rather will direct its attention toward "speculators" ". . . gaining only from an extractive type of ownership, not investment ownership, investing in jobs or anything else."[21]

No Oklahoman can deny that a posture, taken publicly, questioning the desirability and long-range consequences (economic, social and political) of extensive foreign investment in and acquisition of American commercial real estate, farm and ranch lands, and mineral deposits has immeasurable political appeal.

Without question, the most disturbing and confusing aspect of the Attorney General's Report is the conclusion stated that title to land conveyed to a non-resident alien in violation of Oklahoma's alien land laws is "void and not merely voidable." Although the Attorney General does cite one Oklahoma case[22] in support of that conclusion, it is surprising to discover that the opinion of Mr. Justice Riley in that case, from which the Attorney General liberally quotes, is a lone dissenting opin-

ion. Moreover, that case deals, **not** with alien ownership of real property, but with corporate ownership of rural land. Attorney General Opinion No. 79-286 is even more explicit in this regard in stating that "[t]itle to land which has been conveyed in violation of Article 22, §1, of the Oklahoma Constitution, and 60 O.S. 1971, §121, **has escheated** to the State of Oklahoma." (Emphasis supplied) The balance of this article will be concerned with this "void and not merely voidable" issue.

The Attorney General's Report and Attorney General Opinion No. 79-286 collectively constitute a radical departure from a solid line of judicial authority which has evolved in this country during the past century. Under the common law, as discussed by the United States Supreme Court on numerous occasions,[23] an alien might take title to land by purchase (whether by grant or devise), but not by descent, and, although his title was held for the benefit of the state, it was good against all the world **except** the state. The title-holding alien had complete dominion over such land, including the ability to convey title, until title was seized by the sovereign. In addition, although title to land might be held illegally by an alien, such title did not escheat *ipso facto* to the state; rather, as stated to be the "general rule" by one commentator who cites some 60 cases in support of that rule:

> "In the absence of an express statute to the contrary, the alienage of a grantee or devisee does not, during his lifetime, vest title in the state **without a judicial proceeding to enforce an escheat.**" (Emphasis supplied)[24]

As the United States Supreme Court observed in 1826:

> "That an alien can take by deed, and hold until office found [the proceeding in which the fact of alienage is adjudicated and title forfeited to the state by escheat], must now be regarded as a positive rule of law, so well established that the reason of the rule is little more than a subject of the antiquary."[25]

Unfortunately, although there was a consensus of legal opinion that an alien held only defeasible title to such land subject to being defeated by the state through escheat proceedings, there was a divergence of opinion among the early judicial authorities as to whether a purchaser from an alien also took title subject to the same possibility of forfeiture. In his treatise "CLEARING LAND TITLES" (2d Ed.), Professor Basye attributes the blame for such confusion to Chancellor Kent, an eminent American legal scholar of the early nineteenth century, whose comments to the effect that the grantee of an alien took only defeasible title purportedly influenced other courts, including, apparently, some very early American courts,[26] to perpetuate the erroneous conclusion. According to Professor Basye, ". . . there was no precedent for this statement" and "[t]he authorities cited by him [Chancellor Kent] did not substantiate such a view."[27]

In any event, the overwhelming majority of cases reported in this country since the mid-1800's conclude that an alien may, prior to commencement of escheat proceedings, transfer title to land to a purchaser **in good faith for value,** and that such purchaser will have **valid title** against all the world, **including** the state.[28] Perhaps the most frequently cited case supporting this proposition is the *Abrams* case,[29] a 1907 Washington Supreme Court case. *Abrams* clearly holds that title to land held in contravention of alien ownership restrictions is "voidable" only, and not "void;" that the owner of such land can at any time, before escheat proceedings are commenced, divest himself of such title by conveyance; that the purchaser of such owner takes good ("indefeasible") title by such conveyance; and that the state cannot thereafter maintain an action in escheat against such land.

The conclusion of the *Abrams* court represents the modern view as to the indefeasibility of title acquired from an alien by a purchaser in good faith for value. In 1932, the Wyoming Supreme Court, recognizing this fact, stated in an opinion involving interpretation of that state's alien land laws:

> "Whatever, accordingly, may have been the rule of the early common law, it is clear from the foregoing authorities that at least, **according to the trend of modern thought,** an alien who is entitled to inherit real property, but who takes only a defeasible estate, and one subject to be defeated by the state by an action brought, may, before the commencement of such action, dispose of property, in good faith, and **convey title good**

against the world, including the state." (Emphasis supplied)[30]

It is submitted that the Wyoming case goes much further than *Abrams* in conclusively establishing the rule of indefeasibility of title. The Wyoming case was concerned with title by inheritance which had been **prohibited** at common law, while the *Abrams* case was concerned with title by purchase which was permitted under common law.

The policy serving as the foundation for this now commonly accepted conclusion is that, because the underlying object of alien land laws is to prevent the holding of real estate by aliens, a transfer by a land-holding alien to a purchaser in good faith for value effectively accomplishes that object.[31] To permit the state to institute escheat proceedings **after** divestiture of title by the alien would be to permit the state to punish the alien and/or the alien's grantee for the sake of punishment alone. After all, not even the high crime of treason is punishable under Oklahoma law by total confiscation of all property held by the adjudged guilty party.[32]

This conclusion is now accepted as so basic and fundamental that legal commentators treat it as a rule of law. In fact, one prominent authority on property law, in discussing conveyances to and by aliens in the context of title examination, advises as follows:

> "If the examination is being made for a prospective purchaser who is an alien, there should be a detailed investigation of the pertinent statutes of the state of situs, not incident to examination of the existing title but to advise him as to the result of a conveyance to him. **But if the examination is for any other purchaser, the fact that the grantor is an alien or that there is an alien in the chain of *inter vivos* conveyances is immaterial and need not be investigated. This is because any alien who holds land in contravention of statute may nevertheless convey good title at any time before escheat proceedings are commenced.**" (Emphasis supplied)[33]

It is of particular interest to note that, in the same context, another commentator has described Section 124 of Title 60 as "curative in purpose" by discussing its origin as follows:

> "In order to cure any defect in [titles involving conveyances of land from an alien to a citizen] or to remove any possible doubt concerning them, a number of statutes, curative in purpose, have also been adopted to make it clear that the previous ownership of land by an alien will not affect its present marketability so long as the state did not institute proceedings to take advantage of restrictions on alien ownership."[34]

While there is no definitive judicial authority resolving the question of whether title conveyed to and held by a non-resident alien in contravention of the alien land laws is void or merely voidable, and although we must be guided primarily by the express language of the pertinent constitutional and statutory provisions dealing with alien ownership and reasonable inferences and interpretations to be drawn therefrom, it is possible to take great comfort in the fact that a close parallel may be drawn between the issue of alien ownership of land and the issue of corporate ownership of agricultural land, the latter being governed by Article XXII, Section 2, of the Oklahoma Constitution, which provides in material part as follows:

> "No corporation shall . . . acquire . . . real estate for any purpose . . . except such as shall be necessary and proper for carrying on the business for which it was chartered or licensed . . ."

In 18 O.S. 1971, §§1.20-1.25, it is provided that a corporation may not ". . . own, hold, or take any real estate located in this State outside of any incorporated city or town, or any addition thereto" except as is "necessary and proper for carrying on the business for which any corporation has been lawfully formed or domesticated in this State," under penalty of criminal sanctions and payment of fines.

Note that the exclusive authority cited by the Attorney General in his May 1, 1979 Report in concluding that title held by an alien is void and not simply voidable characterizes the constitutional provision proscribing alien ownership of Oklahoma land as "an analogous provision" to the constitutional and statutory prohibitions on **corporate** ownership of rural land in determining whether violation of such laws would result in escheat of title to the state.[35] Other jurisdictions also have recognized this close parallel.[36] What the

. . . land suspected to have been taken in contravention of the alien land laws would lie fallow and non-productive until the State, at its caprice, might institute escheat proceedings.

Attorney General's Report fails to recognize is the long line of Oklahoma judicial authority construing the corporate ownership statute[37] (which, prior to its repeal in 1937,[38] provided for escheat), clearly establishing that title held in contravention of that statute was voidable only and not void.

Violation of the statutory restriction on corporate ownership of rural lands is now punishable by criminal sanctions and payment of monetary penalties.[39] However, the old Oklahoma cases construing the escheat procedure in that context are extremely helpful in determining under what circumstances and conditions violation of the Oklahoma alien land laws might result in the escheat of title held by non-resident aliens. Both Sections 1 and 2 of Article XXII of the Oklahoma Constitution were adopted in response to the perceived social evil of widespread absentee land ownership and to promote ownership of Oklahoma land by Oklahomans. Because escheat, like all forms of forfeiture, is not favored by the law and its enforcement is only infrequently pursued and rarely accomplished, its application or non-application in corporate ownership of rural lands cases is instructive for purposes of considering the probability and results of successful active enforcement of Oklahoma's alien land laws.

In *State ex rel. Short v. Benevolent Investment & Relief Association,*[40] the Oklahoma Supreme Court held that a conveyance of Oklahoma real estate to a domesticated corporation vested title to such real estate in the grantee, even though acquiring or holding that real estate was beyond the power granted to the corporate grantee by its charter, i.e. *ultra vires.* The court ruled that in order for the State to be entitled to forfeiture of such land by escheat, it must have commenced escheat proceedings against that land prior to conveyance by the corporate defendant to a third party in good faith and for value.[41]

In the *McMillan* case,[42] the Oklahoma Supreme Court was confronted with a fact situation in which an Oklahoma resident had conveyed a mineral interest to a foreign corporation which had not complied with Oklahoma's domestication statutes.[43] Such conveyance had been made for valuable consideration, and the instrument effecting the conveyance was properly executed, delivered and recorded. The sole issue before the court as raised by the resident grantor was whether the mineral deed was void and subject to be cancelled of record by reason of the corporate grantee's failure to domesticate in Oklahoma. The court carefully distinguished the concepts of "voidable" and "void," and found that the mineral deed was at most "voidable." Citing the *Benevolent Investment* case, *supra,* the *McMillan* court held that the competency of the grantee by reason of its violation of the domestication statute could not be collaterally questioned or attacked by a private person, but could be done only in a direct proceeding instituted by the state. Absent commencement of such proceeding, the corporate grantee, although it was subject at all times to the "constant risk of intervention by the state," was free to transfer its title to a purchaser, and the title in the hands of such purchaser would be valid as against all the world, including the state. The court further held that the original grantor was **estopped** from denying the capacity of the corporation to take title to the lands involved for the reason that valuable consideration had been paid for that interest and a deed executed and delivered evidencing the transfer.

In *Wolfe v. State ex rel. Presson,*[44] the Oklahoma Supreme Court held that the holding of

real estate by a corporation in violation of Article XXII, Section 2, of the Oklahoma Constitution, while a cause or ground of escheat, did not *ipso facto* effect an escheat. In the fourth paragraph of its Syllabus, the court held:

> "The object of the provisions of section 2, article 22, of the Constitution is to prevent the holding of excessive real estate by a corporation, and if at any time before escheat proceedings are begun the corporation divests itself of title to said real estate by a conveyance, said purchaser takes a good title by virtue of said conveyance, and the state cannot thereafter maintain an action to forfeit said real estate to the state, as the transfer of the real estate has effected the object and purpose of said constitutional provision."

Finally, in *Texas Co. v. State ex rel. Coryell*, cited *supra*, the Oklahoma Supreme Court held against a county district attorney in ruling that conveyances made in violation of Oklahoma's corporate ownership laws are merely voidable and not void, and voidable only in a direct proceeding commenced by the State. The court than pondered in writing what it apparently considered to be obvious:

> "Incidentally, unless title did pass there would be no property right therein of the defendant to be subject to escheat."[45]

This is precisely the question being pondered by Oklahoma real property attorneys in the wake of the Attorney General's Report and Attorney General Opinion No. 79-286. If title taken by a non-resident alien is in fact "void" despite the clarity of Section 124, then that grantee would have no title to convey to a third party. Who then would hold title to the subject land — the grantor who has received valuable consideration for the conveyance by the alien grantee? Or would the State, irrespective of the doctrine of "indefeasibility of title" discussed above, be deemed the title holder **even before** escheat proceedings were commenced?

The Attorney General apparently subscribes to the position that title to such land vests in the State immediately upon violation of the alien land laws and before commencement of the escheat proceeding. This position overlooks the facts, as discussed above, that Oklahoma's alien land laws provide for forfeiture only in the circumvention transfer situation specifically addressed by 60 O.S. 1971, §124, and that the State acquires title only in the event it is the successful purchaser at the sheriff's sale held in connection with enforcing the escheat judgment. Judicial adoption of the Attorney General's position would cause land suspected to have been taken in contravention of the alien land laws to lie fallow and non-productive until the State, at its caprice, might institute escheat proceedings. The undesirable economic consequences, not only to the alien but also to the State of Oklahoma, resulting from such a system are obvious.

As mentioned above, Mr. Justice Riley's lone dissenting opinion in the *Texas Co.* case is the only Oklahoma authority cited by the Attorney General's Report in support of its "void and not voidable" position. Of course, inasmuch as that opinion is a dissent and is concerned with corporate ownership of rural land and **not** non-resident alien ownership of urban land, the Attorney General's authority is far from unimpeachable. In addition, in support of his contention that an escheat occurs *ipso facto* "upon the happening of the event and the existence of the facts constituting an escheat,"[46] Mr. Justice Riley cites a New York case styled *Re Melrose Avenue.*[47] Reference to that New York case leads to the discovery that it involved the rights of an alien to take title by intestate succession and **not** by purchase. The last paragraph of *Melrose* (and the cases cited therein) carefully distinguish between title taken by purchase and that taken by descent. As discussed earlier,[48] rules governing the latter are in no manner applicable to the former. Given its context, the dissent's reliance on the cited New York case in *Texas Co.* is totally misplaced.

One other line of Oklahoma cases is worthy of brief mention in this discussion. Prior to enactment of the Oklahoma Farming or Ranching Business Corporations Act in 1971,[49] the Oklahoma Supreme Court had construed the corporate ownership of rural lands statutes very liberally in permitting corporations to organize and engage in the business of farming or ranching with the power to acquire that amount of rural land which was "necessary and proper" for operations.[50] Because the corporate ownership and alien ownership laws share the same social, economic and political underpinnings, it would seem reasonable that the Oklahoma Supreme Court, if

confronted with the task of interpreting the alien land laws, would resolve all questions and doubts against the State as it has done with the corporate ownership of rural lands cases, especially with respect to the issue of whether title conveyed to and held by a non-resident alien in contravention of the statutes is void or merely voidable. Given the fundamental principles that (i) escheat, as a form of forfeiture, is not favored by the law, and (ii) Oklahoma's alien land laws are highly penal in character, any such questions or doubts **should,** as a matter of proper statutory construction, be resolved against the State.

Any ruling contrary to that suggested above would revolutionize the attitudes and practices of Oklahoma real property attorneys. As the Wyoming Supreme Court stated in its *Dutton* opinion, referred to earlier in this discussion:

> "A different rule might result in great hardship, for if the sovereign could challenge the title of the grantee . . . it could challenge the title of his grantee, and so on. The question of the right . . . to hold real estate might be a close one, and the purchaser, in good faith, might accept a conveyance, relying in part upon the failure of the sovereign to challenge the title . . . and later be compelled to defend a title which should have been challenged before."[51]

In addition, certain of our Title Examination Standards[52] would become obsolete. For example, an attorney examining title may presently refrain from inquiring as to the authority of an Oklahoma corporation "to acquire, encumber and sell property" situated in a city or town.[53] Under the proposition implicitly enunciated by the Attorney General's Report and Attorney General Opinion No. 79-286, a deed from a domestic corporation controlled by aliens, or from the grantee, immediate or remote, of such corporation, would be void, possibly in the same manner and to the same extent as a forged deed or one procured through fraud. In such case, even a subsequent purchaser in good faith for value **and without notice** would not be protected.

Examination of record title would no longer be safe or sufficient. As to any corporation appearing in the chain of title to a given tract of land, it would be necessary to determine the identities and residences of the shareholders, officers and directors of such corporation, and further to determine the extent, if any, to which such corporation was "controlled" by non-resident aliens.

Would familiar, large, publicly-held corporations, having among their shareholders substantial numbers of non-resident aliens, be considered "controlled" or perhaps significantly influenced to such an extent as to make titles held or conveyed by them suspect? No corporate grantor or grantee appearing in the chain of title to any given tract of land would be free from suspicion. These grave problems may readily be perceived, and are among the matters which should weigh heavily on the collective mind of the Oklahoma Supreme Court in construing Oklahoma's alien land laws in the event those laws should be enforced, and as a consequence judicially challenged, for the first time since their enactment in 1910.

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1. It is interesting to note that one commentator, in the course of presenting a survey of the alien land laws of the 18 westernmost states (excluding Hawaii) in the context of alien ownership of mineral interests, characterized Oklahoma as ". . . perhaps the **most restrictive** state of those considered." (Emphasis supplied). Fiske and Meagher, "Alien Ownership of Mineral Interests", 24 ROCKY MT. MIN. L. INST. 47, 87-88 (1978). For a comprehensive survey of the alien land laws of other states, see Morrison, "Limitations on Alien Investment in American Real Estate," 60 MINN. L. REV. 621, 629-638 (1976); and "Foreign Investment in U.S. Real Estate: Federal and State Laws Affecting the Investor," 14 REAL PROPERTY, PROBATE AND TRUST JOURNAL (Spring 1979), pp. 1-44.

2. *Terrace v. Thompson*, 263 U.S. 197, 44 S.Ct. 15, 68 L.Ed. 255 (1923); *Webb v. O'Brien*, 263 U.S. 313, 44 S.Ct. 112, 68 L.Ed. 318 (1923); see also *Shames v. Nebraska*, 323 F. Supp. 1321 (D. Neb. 1971), aff'd, 408 U.S. 901, 92 S.Ct. 2478, 33 L.Ed.2d 321 (1972).

3. The issue of the constitutionality of Oklahoma's alien land laws is the subject of Note, "Constitutional Law: Are Oklahoma's Restrictions on Alien Ownership of Land Constitutional?," 32 OKLA. L. REV. 144 (1979). For a general discussion of the constitutionality of state laws restricting alien land ownership, see Morrison, "Limitations on Alien Investment in American Real Estate," 60 MINN. L. REV. 621, 639 *et seq.* (1976).

4. OKLA. CONST. art. 22, §1; 60 O.S. 1971, §121.

5. 60 O.S. 1971, §122.

6. *Id.*

7. 60 O.S. 1971, §123. The Oklahoma Supreme Court has ruled that neither the Constitution nor the alien land statues deprive an alien of the right to enforce a lien created under an instrument executed and delivered in the form of a deed but intended as a mortgage to secure certain indebtedness. *Cooke v. Coronado Oil Co.*, 112 Okla. 240, 240 Pac. 739 (1925).

8. The issue of whether a provision is "self-executing" is commonly raised in connection with con-

stitutional provisions. That term has been defined by the Oklahoma Supreme Court as follows: "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the rights given may be enjoyed and protected, **or the duty imposed may be enforced;** that it is not self-executing when it merely indicates principles, **without laying down rules by means of which those principles may be given the force of law.**" (Emphasis supplied). *Zachary v. City of Wagoner*, 146 Okla. 268, 292 Pac. 345, 348 (1930). For example, Article XXII, Section 2, of the Oklahoma Constitution (dealing with corporate ownership of Oklahoma real property) has been held not to be self-executing. *United States Gypsum Company v. State ex rel. Rutherford*, 328 P.2d 431 (Okla. 1958). The same deficiency may be said to apply to Section 121 of Title 60; no penalty is prescribed for holding or conveying title to Oklahoma land prior to institution of escheat proceedings by the State.

9. From the standpoint of considering the ability of a "foreign" corporation to hold title to or own land in Oklahoma, it is submitted that a plausible, although admittedly judicially-untested, argument exists for concluding that the act of domestication must be considered similar in effect to the act of establishing residency by a non-resident alien individual. (Given the fact that 60 O.S. 1971, §122, speaks in terms of both "residency" and "inhabitancy," it may be that the lesser standard of "inhabitancy," and not "residency," is the appropriate test in determining whether the exception provided by Section 122 has been met.) Note that 18 O.S. 1971, §1.2 ("Definitions") of Oklahoma's Business Corporation Act defines the term "foreign corporation" as "a corporation other than a domestic corporation;" this, of course, would include both a corporation formed under the laws of another state of the United States and a corporation formed under the laws of another nation. Note also that 18 O.S. 1971, §1.199(d), affords a "foreign corporation," upon domesticating in Oklahoma, "the same rights and privileges" enjoyed by a domestic corporation, subject to "the same duties, restrictions, penalties, and liabilities" imposed upon such domestic corporation. 18 O.S. 1971, §1.19(6) permits a domestic corporation to acquire, own, hold and convey real property, subject to Article XXII, Section 2, of the Oklahoma Constitution and 18 O.S. 1971, §§1.20 thru 1.25 (all dealing with limitations on corporate ownership of rural Oklahoma land). While Section 1.19(6) is silent as to ownership of Oklahoma urban real property by an alien corporation duly domesticated in Oklahoma, it would appear that Section 1.199(d) expressly authorizes such ownership. Finally, note that while Article XXII, Section 2, of the Oklahoma Constitution distinguishes between a corporation "created" in Oklahoma and a corporation "licensed" in this State, that constitutional provision does not restrict in any manner either type of corporation from buying, acquiring, trading or dealing in real estate located in "towns and cities" and "additions to such towns and cities." Opinion No. 79-286 states: "It is incumbent upon the alien seeking to avoid the constitutional prohibition to establish the applicability of the exception thereto afforded by 60 O.S.1971, §122, relating to aliens who take up 'bona fide residence in this State.' " To the contrary, it is submitted that it is incumbent upon the State to establish the **inapplicability** of that exception given the penal character of Oklahoma's alien land laws. Any ambiguity or confusion as to the scope of coverage or application of Oklahoma's alien land laws should be construed against the State.

10. 18 O.S. Supp. 1978, §§1.1-1.250.

11. 18 O.S. 1971, §§1.19 (6) and 1.20(b)(1).

12. Note, however, that 60 O.S. 1971, §121, permits non-resident aliens to hold personal property (e.g. corporate stock) only to the extent that personal property may be owned by United States citizens under the laws of the nation of which such aliens are citizens or by treaty of such nation with the United States.

13. In Oklahoma there is limited authority for the proposition that a corporation's residence is the same as its principal place of business; however, these cases involve questions of jurisdiction and taxation. *Roff Oil & Cotton Co. v. King*, 148 Pac. 90 (Okla.1915); 68 O.S. Supp. 1978, §2353(9).

14. 20 C.J.S. "Corporations" §1794, at 17 (1940); 18 AM.JUR. 2d "Corporations" §159, at 693 (1965); and 8 Fletcher, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS §4025, at 417, 423-425 (1966). Certainly analogous is the law (statutory, regulatory and decisional) applicable to establishment and proof of federal mining claims and the requirement that any party wishing to locate a federal mining claim must be or intend to become a citizen of the United States. See *Doe v. Waterloo Min. Co.*, 70 Fed. 455 (9th Cir. 1895) (holding in a federal mining claims case that the citizenship of a corporation's shareholders is not relevant and that the corporation's citizenship is determined by the place of filing of the entity's certificate of incorporation). See also *Jackson v. White Cloud Gold Min. & Mill Co.*, 85 Pac. 639 (Colo. 1906). And *Muller v. Dows*, 94 U.S. 444, 24 L.Ed. 207 (holding that, in establishing diversity for jurisdictional purposes, absent an express statutory requirement, a federal court does not inquire into the citizenship of a corporation's shareholders and must recognize the conclusive presumption that all of the shareholders of a corporation are citizens of the state of incorporation).

15. 18 O.S. 1971, §1.199(d), provides as follows: "A foreign corporation, upon receiving a certificate of domestication from the Secretary of State, shall enjoy the same rights and privileges as, but none greater than, a domestic corporation organized for the purposes set forth in the articles of domestication pursuant to which such certificate of domestication is issued; and, except as in this Act otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation with like purpose and of like character."

16. e.g., *State v. Hudson Land Co.*, 52 Pac. 574 (Wash. 1898) (a 49-year lease held by a Washington corporation, a majority of the outstanding stock of which was transferred to aliens **after** creation of such lease, was declared to be violative of the state's alien land laws as inconsistent with the "intent" that ownership and subterfuges in aid of ownership by aliens be prohibited).

17. *People's National Bank v. Board of Commissioners of Kingfisher County*, 104 Pac. 55 (Okla. 1909). In the case of *Cooke v. Tankersley*, 189 P.2d 417 (Okla. 1948), the Oklahoma Supreme Court reiterated this rule that title to corporate assets is in the corporation and not in the shareholders and that the interest of the individual

shareholder consists only of the right to a proportionate share of corporate profits when dividends are declared and to a proportionate share of corporate assets upon dissolution of the corporation after the corporation's debts are paid. See also 18 AM. JUR.2d "Corporations" §486, at 979-981 (1965).

18. Note, "Attorney General: The Effect of the Attorney General's Opinion in Oklahoma," 28 OKLA. L. REV. 106 (1975).

19. An executive of the U.S. Chamber of Commerce has labeled the decision "ludicrous, absurd, incredibly hard to believe, shocking and un-American." Daily Oklahoman, Sept. 20, 1979, at 1-2.

20. Oklahoma City Times, Sept. 20, 1979, at 1-2.

21. Daily Oklahoman, Sept. 19, 1979, at 1-2.

22. *Texas Co. v. State ex rel. Coryell*, 198 Okla. 565, 180 P.2d 631 (1947).

23. *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch (U.S.) 603, 3 L.Ed. 453 (1813); *Doe ex dem. Governeur v. Robertson*, 11 Wheat (U.S.) 332, 6 L.Ed. 488 (1826); and *Phillips v. Moore*, 100 U.S. 208, 25 L.Ed. 603 (1879).

24. 23 ALR 1237, 1244 (1923). See also *Doe ex dem. Governeur v. Robertson*, 11 Wheat (U.S.) 332, 6 L.Ed. 488 (1826) (statutes forbidding aliens to hold real estate have been held not to affect title of alien grantee **before** adjudication of escheat); and *Osterman v. Baldwin*, 6 Wall. (U.S.) 116, 18 L.Ed. 730 (1867) (until office found, an alien-grantee is competent to hold real estate as against third person; third person cannot contest such title in collateral proceeding if the state has not exercised its prerogative); and *Madden v. State*, 75 Pac. 1023 (Kan. 1904) (only the state can question the title of an alien; the heirs of a resident grantor were **estopped** by the covenants of a warranty deed executed and delivered by said grantor to an alien grantee from claiming any interest in the conveyed land).

25. *Doe ex dem. Governeur v. Robertson*, 11 Wheat (U.S.) 332,354, 6 L.Ed. 488 (1826).

26. e.g., *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch (U.S.) 603, 3 L.Ed. 453 (1813) (dictum).

27. P. Basye, CLEARING LAND TITLES (2d Ed. 1970) §280, at 598.

28. *Abrams v. State*, 88 Pac. 327 (Wash. 1907) (discussed *infra*); *State ex rel. Atkinson v. World Real Estate Commercial Co.*, 89 Pac. 471 (Wash. 1907); *Oregon Mortgage Co. v. Carstens*, 47 Pac. 421 (Wash. 1896); *Dutton v. Donahue*, 8 P.2d 90 (Wyo. 1932); *Mott v. Cline*, 253 Pac. 718 (Cal. 1927). See also *Pembroke v. Huston*, 79 S.W. 470 (Mo. 1904); *Stamm v. Bostwick*, 25 N.E. 233 (N.Y. 1890); and *Manuel v. Wulff*, 152 U.S. 505, 14 S.Ct. 651, 38 L.Ed. 532 (1894). Basye, *supra* note 27, at 602-603, cites some 15 cases supporting this proposition.

29. *Abrams v. State of Washington*, 88 Pac. 327 (Wash. 1907).

30. *Dutton v. Donahue*, 8 P.2d 90, 95 (Wyo. 1932). See also the recent Nebraska Supreme Court case of *Matter of Estate of Wilson*, 237 N.W.2d 835 (Neb. 1976), holding that an alien may hold and convey title to land if no proceedings have been brought by the state to declare an escheat, and that he may make a valid conveyance of the land and thereby defeat the right of the state to an escheat. Even if interpretation of Section 124 were deemed necessary, it is submitted that the cited Nebraska case would be highly persuasive to the Oklahoma Supreme Court given the fact that Nebraska is a state with similar alien land laws and one with a similar socio-economic history and structure.

31. *Louisville School Board v. King*, 107 S.W. 247 (Ky. App. 1908); *Abrams*, *supra* note 28; *Commonwealth v. New York, L.E.&W.R. Co.*, 19 Atl. 291 (Pa. 1890); and *Wilson v. Triumph Consol. Min. Co.*, 56 Pac. 300 (Utah 1899). See also *State ex rel. Short v. Benevolent Investment & Relief Association*, 107 Okla. 228, 232 Pac. 35 (1925), discussed *infra* note 40.

32. OKLA. CONST. art. 2, §16; 21 O.S. 1971, §1266.

33. IV AMERICAN LAW OF PROPERTY §18.46, at 733 (1952); same approach taken by PATTON ON TITLES §239, at 645 (1957).

34. P. Basye, CLEARING LAND TITLES (2d Ed. 1970) §280, at 603.

35. *Texas Co. v. State ex rel. Coryell*, 198 Okla. 565, 180 P.2d 631, 643 (1947) (dissenting opinion).

36. *Louisville School Board v. King*, 107 S.W. 247 (Ky. App. 1908); *Dutton v. Donahue*, 8 P.2d 90 (Wyo. 1932); and *In re Palmer Window Glass Co.*, 183 Fed. 902 (D. Pa. 1911).

37. OKLA. STAT. 1931, §1636.

38. Escheat provision repealed by H.B. 77, §14, S. L. 1937, ch. 46, p. 314, 317.

39. 18 O.S. 1971, §§1.20-1.25. See also 18 O.S. §1.19(6).

40. 107 Okla. 228, 232 Pac. 35 (1924).

41. The opinion of the *Benevolent Investment* court indicates, and it may be very significant, that the State, in presenting its case, admitted that in the case of an alien, a valid conveyance of title by such person may be made at any time before escheat proceedings are commenced. 107 Okla. at 232, 232 Pac. at 38.

42. *McMillan v. Pawnee Petroleum Corporation*, 1 P.2d 775 (Okla. 1931).

43. Since replaced by 18 O.S. 1971, §1.201, providing that contracts **may** be enforced upon domestication of the corporation.

44. 163 Okla. 180, 21 P.2d 1067 (1933); cited with approval in *Johnstone v. Patterson*, 418 P.2d 656, 658 (Okla. 1966).

45. 198 Okla. at 571, 180 P.2d at 638. Other cases involving unlawful acquisition of rural land by corporations in contravention of Oklahoma's constitutional provision and statutes which have held that such acquisition is voidable only and may be questioned only in a direct proceeding by the state are as follows: *Union Trust Co. v. Hendrickson*, 69 Okla. 277, 172 Pac. 440 (1918) (state alone can question as *ultra vires* the acquisition of title to and holding of real property by a corporation); *Brown v. Capps*, 164 Okla. 91, 22 P.2d 1008 (1933) (same issue); and *Schultz v. Morgan Sash & Door Co.*, 344 P.2d 253 (Okla. 1959) (same issue).

46. *Texas Co. v. State ex rel. Coryell*, 198 Okl. 565, 578, 180 P.2d 631, 644 (1947).

47. 234 N.Y. 48, 136 N.E. 235, 23 ALR 1237 (1922).

48. See discussion *supra*, at note 23.

49. 18 O.S. Supp. 1978, §§951-956.

50. *State ex rel. Reidy v. International Paper Co.*, 342 P.2d 565 (Okla. 1959); *Leforce v. Bullard*, 454 P.2d 297 (Okla. 1969); and *Oklahoma Land and Cattle Co. v. State ex rel. Mattingly*, 456 P.2d 544 (Okla. 1969).

51. *Dutton v. Donahue*, 8 P.2d 90, 95 (Wyo. 1932).
52. 16 O.S. Supp. 1978, Ch. 1, App.
53. *Id.*, Standard 9.2, providing in pertinent part: "Every Oklahoma corporation has authority to acquire, encumber and sell property subject only to the limitations in Art. XXII, Sec. 2, Okla. Const. and T. 18 O.S.A. Secs. 1.20 and 1.25."

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