

TAXATION: Certificate holder only entitled to receive amount of certificate plus subsequent taxes paid.

January 4, 1937.



Hon. Mark W. Wilson
Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Mr. Wilson:

We are in receipt of your communication of recent date requesting an opinion of this office on the following matters:

"The following question has arisen concerning the new tax law providing for the sale of delinquent property as appears in the 1933 Session Acts on page 425 et seq., and I would appreciate very much if you will give me an opinion for the County Treasurer on the same.

In October, 1936, a piece of property in Deepwater, Henry County, Missouri, was sold as provided by the 1933 Act. The certificate specifically set forth the State and County taxes for the year for which the property was sold. The purchaser of the certificate thereafter paid the city taxes delinquent on said property described in his certificate and due to the City of Deepwater, which were taxes from the year 1931 to date. The owner of the property is now tendering to the County Treasurer and has paid into his hands the amount of state and county taxes plus interest and costs as provided for in the certificate of sale, but the title owner of the property is refusing to reimburse the certificate holder for the city taxes paid as above noted.

The following questions are asked:

1. Has the Treasurer and ex-officio collector of Henry County the right to demand of the title holder the amount of city taxes paid by the certificate purchaser?
2. Has the purchaser of a certificate under the law, any right to reimbursement from the title holder for taxes paid to the City of Deepwater which were delinquent and a lien on the property?"

Your communication involves two entirely separate and distinct problems. The second question appears to concern only the individual rights of the purchaser of the certificate and what if any rights he may have against some third party. As this is a matter of private litigation not involving the State or your office it does not appear that this is a proper subject for an opinion. We are therefore limiting this opinion to the proposition first stated.

I.

Treasurer and ex-officio collector can only demand of redeemor the amount of the certificate of purchase with interest thereon stated and all subsequent taxes paid by purchaser with interest at eight per centum per annum.

Section 9956a, page 437, Laws of Missouri 1933, provides the manner in which an owner, occupant or other person having an interest in the land may redeem the land from the tax sale and provides that he may do so

"By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to

exceed ten per centum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption.*****"

It is to be noted that in addition to the purchase price of the certificate the redeemor must pay to the purchaser "all subsequent taxes" which were paid.

It will be seen that a mandatory duty is placed upon the holder of the certificate of purchase to pay, under Section 9957c, page 440, Laws of Missouri 1933,

"all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for deed,
*****"

In the instant case it is certain that the city taxes which were paid by the holder of the certificate of purchase a few days after the sale had not "accrued" since "the execution of said certificate," as all such taxes had been due and accrued for such time, nor could such city taxes be considered as prior taxes remaining due and unpaid, lien for which had not been foreclosed as it is recognized that city taxes are inferior to and not "prior" to state and county taxes. This section further provides that if

"any purchaser shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property***such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser,*****."

January 4, 1937

Thus it appears that the purchaser of a certificate who fails to follow the mandatory directions and pay taxes subsequently accrued is penalized by forfeiture of his rights, but it is to be noted that this applies to "subsequent taxes" and does not purport to cover any and all taxes which may at any time have been or will be assessed against the property.

By referring to Section 9958c, page 441, Laws of Missouri 1933, we see that in case any conveyance for taxes proves to be invalid, the lien of the State is preserved and vested in the grantee of such certificate who shall be entitled to a lien on the land for the amount of taxes, penalties and interest

"together with the amount of all subsequent taxes paid, with interest, *****".

The purchaser then is again protected as to the amount paid for the certificate plus any "subsequent taxes" paid.

Referring to Section 9962d, page 446, Laws of Missouri 1933, a section somewhat similar in its provisions to Section 9958c, only further applying to cases involving suit to quiet title, it is provided that "the Court shall ascertain the amount due the party holding such tax deed and from whom due for principal and interest and for all improvements made by him on such lands including subsequent taxes paid with interest,". Considering this act in its entirety it appears that protection is given to the certificate holder for subsequent taxes which are paid by him but nothing is said authorizing or requiring him to pay taxes which may be of inferior character and which were due and accrued at the time of the sale but were inferior to the taxes for which the land was sold.

It therefore appears that the Jones-Munger law did not contemplate, authorize or require the holder of the certificate to pay the taxes referred to in your communication and that to require their payment to the Treasurer, ex-officio collector would be to extend and expand the requirements set out in Section 9956a.

Hon. Mark W. Wilson

-5-

January 4, 1937

CONCLUSION

It is therefore the opinion of this office that the Treasurer, ex-officio Collector of Henry County may not demand of the party redeeming the amount of city taxes paid by the purchaser in the instant case.

Respectfully submitted,


HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

HGW:MM