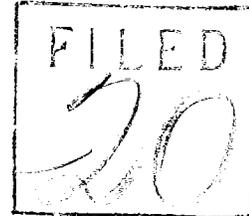


DRAINAGE DISTRICTS DELINQUENT TAXES: Trustee appointed by county court to bid at tax sales not authorized to include delinquent drainage tax in the amount of his bid.

January 24, 1941

1-30

Hon. Marshall Craig
Prosecuting Attorney
Charleston, Missouri



Dear Sir:

Receipt is acknowledged of your letter of January 21, 1941, in which you ask for an opinion on the following question:

"In Section 9953B, Laws of the State of Missouri 1939, authority is given the County Court to appoint a Trustee to buy in land for the County for the amount of taxes due.

"In this County we have a great many Drainage Districts and several of them are County Court Districts. By reason of this situation there arises a question as to what steps the County Court and its duly appointed Trustee should take to protect the County Court Drainage Districts.

"For example lets' say the State and County taxes on 40 acres of land becomes delinquent and amounts to \$100.00. On the same land the Drainage taxes, assessed under a County Court District, amounts to \$50.00 for the same years. The question arises as to whether the Trustee appointed by the County Court can bid only \$100.00 and protect only State and County taxes or whether he can bid \$150.00 and protect Drainage District in addition.

"It seems that Trustees should be permitted to bid the full \$150.00 and then to sell the property for enough to pay both the County and Drainage District. This should be especially true if the Courts are going to hold that when

a piece of property is bid on by the Trustee for State and County purposes, all special assessments for the same years are to be cut off."

Section 9953b, Laws of Missouri, 1939, page 851, mentioned in your question was enacted by the General Assembly by Senate Bill 311, approved June 16, 1939. This bill also contained Sections 9953a and 9963f. These sections of the law were enacted to amend Senate Bill 94 enacted by the General Assembly in 1933, approved April 7, 1933, and found in Laws of Missouri, 1933, page 425 and following. This last mentioned Act does not apply to the collection of drainage or levee assessments or other special assessments, Section 9963d, page 448, Laws 1933.

"* * *nor shall this act be so construed as to change in any manner whatsoever the method or mode now or that may hereafter be provided by law for the collection of drainage and/or levee assessments, or other special assessments."

The original act, Senate Bill 94, 1933, did not apply to the collection of drainage assessments, and Senate Bill 311, Laws of 1939, page 850 and following is not made to apply by any of its provisions. However, by Section 9963f of this Bill, Laws 1939, page 852, drainage and levee districts which are given the right and the method is prescribed whereby the junior lien of drainage and levee assessments may be protected from being foreclosed by a sale to satisfy a tax lien, this section is as follows:

"Any drainage, levee or any other special improvement district having a lien on any land or lot, upon which there has been issued a certificate of purchase, may, if authorized by the law creating such drainage, levee or other special improvement district, at any time within the period of redemption applicable to any certificate of purchase, deposit with the collector the amount necessary to redeem such lands. Upon any such deposit the collector shall give immediate notice thereof to the holder of the certificate of purchase. But no drainage, levee or any other special improvement district shall foreclose its lien against any property sold under this act until it has redeemed as provided herein. The holder of such certificate or purchase shall then surrender said

certificate of purchase to the collector, who shall pay to the holder of the certificate the money so deposited by such drainage, levee or other special improvement district. In cases to which this section is applicable said certificate of purchase shall not be cancelled but shall be considered as legally assigned to the drainage, levee or other special improvement district making the deposit as hereinbefore set forth and shall be delivered by the collector to such district, noting thereon compliance with this section. Any such certificate may then be redeemed as provided for in this act from any such drainage, levee or other special improvement district; if not redeemed, then any such drainage, levee, or other special improvement district shall be entitled to a collector's deed, in the same manner and under the same conditions as provided for in this act as to other holders of a certificate of purchase."

This method being provided for the protection of drainage and levee assessments no other method could be followed. *Keane v. Strodtman*, 18 S. W. (2d) 896, 1. c. 898.

"The familiar maxim of 'expressio unius est exclusio alterius' may also be invoked, for the maxim is never more applicable than in the construction of statutes. *Whitehead v. Cape Henry Syndicate*, 105 Va. 463, 54 S. E. 306; *Hackett v. Amsden*, 56 Vt. 201, 206; *Matter of Attorney General*, 2 N. M. 49.

"Certainly where, as at bar, the statute (section 8702) limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done. This is the general rule as to the application of the maxim. Even more relevant under the facts in this case is the interpretation given to it by the Kansas City Court of Appeals in *Dougherty v. Excelsior Springs*, 110 Mo. App. 623, 626, 85 S. W. 112, 113, to this effect: 'That when special powers are conferred, or where a special method is prescribed for the exercise and execution of a power,' that exercise is 'within the provision of the maxim* * * and* * * forbids and renders nugatory the doing of the thing specified except in the particular way pointed out.'"

Hon. Marshall Craig. - 4 - January 24, 1941.

CONCLUSION.

The trustee who may be appointed by the County Court under the provisions of Section 9953b, Laws 1939, page 851, is without authority to include in the amount of his bid the amount of delinquent drainage or levee assessments.

Respectfully submitted,

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APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General.

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