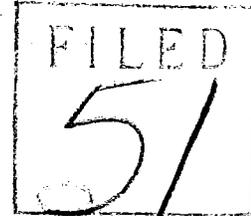


TAXATION: County has no authority to purchase land to protect  
COUNTIES: its tax lien. Holder of certificate under Jones-  
Munger Act must pay subsequent taxes accrued before  
date of collector's deed.

---

January 21, 1941

Honorable Marion E. Lamb  
Prosecuting Attorney  
Randolph County  
Moberly, Missouri



Dear Sir:

We are in receipt of your request for an opinion,  
under date of January 15, 1941, which reads as follows:

"Prior to the passage of Sections 9953A and 9953B, by the Legislature in 1939, which laws are found in The Laws of 1939, Page 851, the County of Randolph at the third offering of property for sale for delinquent taxes, purchased several pieces of property to protect themselves.

"The county now has an opportunity to sell some of this property and has asked the collector to issue a deed, which the collector refuses to do, upon authority of Sections 9957C and 9954B of the Laws of 1933, until the county pays taxes that have accrued since the purchase of the property by the county. It is the contention of the county court that the county should not pay taxes on this property and that the county court has a right to strike off these taxes, which would give the collector authority to issue his deed."

The first question involved in your request to be passed upon by this office will probably answer the full request. You state in your request that Randolph County has been purchasing property at third sales to protect

the claim of the county for the delinquent taxes. You also state that the purchase was made previous to the enactment of Sections 9953a and 9953b, Laws of 1939, page 851, which relate to the purchase of property by a trustee for the county. In 61 Corpus Juris, page 1229, the rule is set out as follows:

"Authority for a state, county, or municipal corporation to purchase land sold at a tax sale is ordinarily regarded as purely statutory, although there is authority to the effect that a city may purchase at a tax sale under a general authority to purchase property for governmental purposes.  
\* \* \* \* \*

In a thorough search of the statutes of this state, we find no authorization for a county to purchase real estate for the protection of their claim for delinquent taxes. There are provisions for the purchase of a foreclosure of a school loan for the protection of the school fund and there are provisions for the purchase of real estate for governmental purposes. Section 2078, R. S. Missouri 1929, permits the county to receive gifts and donations of land under certain circumstances.

In the case of Bayless v. Gibbs, 251 Mo. 492, l. c. 506, the Supreme Court, in passing upon the authority of the county courts of the respective county, stated:

"This court, in numerous cases, has repeatedly held, that the county courts of the respective counties of the State are not the general agents of the counties of the State. They are courts of limited jurisdiction, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null

and void.

"Consequently, this court has also repeatedly held, that all persons while dealing with said courts or agents are bound to take notice of their powers and authority.

"Among the cases so holding are the following: Sturgeon v. Hampton, 88 Mo. 203, l. c. 213; State ex rel v. Crumb, 157 Mo. 545; Cape Girardeau South Western Railway Co. v. Hatton, supra; Wheeler v. Reynolds Land Co., 193 Mo. 279; Moss v. Kauffman, 131 Mo. 424; Hooke v. Chitwood, 127 Mo. 372."

There is no question but that the county courts cannot act outside of their statutory authority and any other act would be null and void.

In the case of Ray County, to the use of the Common School Fund, v. Bentley et al., 49 Mo. 236, l. c. 242, the court said:

"\* \* \* They have no power to purchase land or hold the same unless it is given to them by statute. Nor have they authority to assume the exercise of this right, in a case like this, by implication. \* \* \* \* \*"

Also, in the case of Sturgeon v. Hampton, 88 Mo. 203, l. c. 213, the court said:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority

their acts are void. Saline County v. Wilson, 61 Mo. 237; Wolcott v. Lawrence County, 26 Mo. 275; Steines v. Franklin County, 48 Mo. 167. Persons dealing with such agents are bound to take notice of their powers and authority. State v. Bank, 45 Mo. 538; Andrew County v. Craig, 32 Mo. 531. We should go far to uphold their acts when merely irregular, but in this case the right to a deed for these lands must stand upon the order of the county court discharging the company from the payment of the agreed compensation to the school fund, and the consideration of one thousand dollars paid up stock. Both these acts were not simply irregularities, but they were without any warrant or authority in law and are void. These infirmities appear upon the face of the deeds and orders to which they make reference, and the purchaser from the company took with full notice."

Also, in the case of Saline County v. Wilson, 61 Mo. 237, l. c. 239, the court said:

"\* \* \* County courts are only agents of their respective counties in the manner and to the extent prescribed by law. So long as they continue to tread in the narrow pathway allotted to their feet by legal enactment, their acts are valid, but whenever they step beyond, their acts are void.

"Numerous decisions of this court enunciate and illustrate this well settled rule. \* \* \* \* \*"

Under the above authorities there is no question

but that a county has no authority to purchase real estate at a third sale in order to protect its claim for delinquent taxes. Since they have no authority to make such a purchase, it is not necessary that we answer the balance of your request, but for your information will explain the procedure set out under Sections 9957c and 9954b, Laws of 1933, pages 440 and 435, respectively. Section 9954b, Laws of 1933, reads as follows:

"Any purchaser at delinquent tax sale of any tract or lot of land, his heirs or assigns, who takes possession of any tract or lot of land within the redemption period shall be required to pay the taxes subsequently assessed on such tract or lot of land during the period of occupancy and within the redemption period, and upon failure so to do, or if he commit waste thereon, such purchaser, his heirs or assigns, shall forfeit all rights acquired by his certificate of purchase, so far as the tract or lot of land taken possession of is concerned."

Section 9957c, Laws of 1933, page 400, partially reads as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, \* \*"

The language in this partial section is plain and unambiguous and specifically states that before the holder of a certificate shall receive a deed he shall pay all taxes since the issuance of the certificate, and also this section provides prior taxes that were not foreclosed by a sale under which holder makes demand for deed.

The above sections specifically state the method

under which a deed can be obtained and the county court, under Section 9950, Laws of 1933, page 427, has no authority to compromise back taxes after a certificate has been issued and property sold under the Jones-Munger Act.

In the case of State v. Gehner, 11 S. W. (2d) 30, l. c. 34, the Supreme Court of this state, in Banc, in construing laws exempting property from taxes, said:

"In the construction of laws exempting property from taxation it is a cardinal principle that they must be strictly construed. As a rule all property is liable to taxation, exemption, the exception, and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt. It is in no case to be assumed that the law intends to release any particular property from this obligation; and no such exemption can be allowed, except upon clear and unequivocal proof that such release is required by the terms of the statute. If any doubt arises as to the exemption claimed, it must operate most strongly against the party claiming the exemption.' Fitterer v. Crawford, 157 Mo. loc. cit. 58, 57 S. W. 533, 50 L. R. A. 191.

"As the burden of taxation ordinarily should fall upon all persons alike, when one claims an exemption therefrom he must be able to point to the law granting such immunity and it must be clear and unambiguous.' Kansas Exposition Driving Park v. Kansas City, 174 Mo. loc. cit. 433, 74 S. W. 981.

"Such statute and constitutional provisions are construed with strictness and most strongly against those claiming the exemption.' Beach on Public

Corp. par. 1443; Dillon on Munic. Corp. (3d Ed.) par. 776, and cases cited; 1 Burroughs on Taxation, section 70; 1 Desty on Taxation, p. 108; Cooley on Taxation, pp. 204, 205."

That property sold under the Jones-Munger Act could be exempt from certain years' taxes by the act of the county court is not allowable under any circumstances.

Under Section 9953b, Laws of 1939, page 851, the Legislature recognizes the fact that a county cannot purchase real estate being sold under the Jones-Munger Act to protect its lien for taxes, when they authorized a trustee to purchase the property for the benefit of their participants of the taxes which were a lien against the property. They specifically stated in Section 9953b as follows:

"\* \* \* Such person or persons so designated are hereby declared as to such purchases and as title holders pursuant to collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold. Such person or persons so designated shall not be required to pay the amount bid on any such purchase but the collector's deed issuing on such purchase shall recite the delinquent taxes for which said lands or lots were sold, the amount due each respective taxing authority involved, and that the grantee in such deed or deeds holds title as trustee for the use and benefit of the fund or funds entitled to the payment of the taxes for which said lands or lots were sold. \* \* \* \* \*"

Hon. Marion E. Lamb

(8)

January 21, 1941

Even under this section the county does not take possession of the property to the extent that it would be exempt from further taxes, but merely takes possession of the property through the trustee who holds as trustee for the benefit of all the funds entitled to participate in the delinquent taxes against the property so sold. It is the duty of the trustee buying said property, as soon as possible, to resell the property when a sale will pay all of the taxes against the property. This statute does not specifically exempt the payment of the taxes while in the name of the trustee appointed by the county court.

#### CONCLUSION

In view of the above authorities it is the opinion of this department that the County of Randolph had no authority to purchase the several pieces of property at the third offering under the Jones-Munger Act for the protection of the lien of the county for its taxes upon the property even though the purchase was made previous to the law which authorized a trustee to buy said lands for the protection of the different funds participating in the delinquent taxes.

It is further the opinion of this department that one holding a certificate of purchase and desiring a deed from the collector must first pay all taxes that were not foreclosed by the original sale and all taxes subsequent from the time of the issuance of the certificate to the date of the request for the collector's deed.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

---

COVELL R. HEWITT  
(Acting) Attorney General

WJB:DA