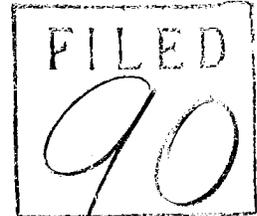


COUNTY TREASURER: Surplus monies can only be paid through
suitable order from county court.

January 3, 1941

Honorable Willard S. Tucker
Assistant Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Sir:

We are in receipt of your request for an opinion,
dated December 26, 1940, which reads as follows:

"Mr. Kirk Baxter, Treasurer of Greene
County, Missouri, requested the follow-
ing opinion:

'From time to time the proceeds from
the sale of certificates exceeds the
amount of claim the various funds hold
against the property sold. This surplus
is turned to the County Treasurer and
becomes a liability to the county.
What disposition should be made of this
surplus?'

I think the real problem with which Mr.
Baxter is concerned, concerns the ques-
tion as to whether he, as County Treas-
urer, should attempt to determine who
the owner or agent is and then distri-
bute the surplus, or as to whether the
question of determining the owner or
agent should be decided by the County
Court and the surplus distributed by
the treasurer only on order of the
County Court. Section #9959, R. S. of
Mo., 1929, as Amended Laws of 1933,
Page 425, leaves this question subject
to interpretation.

As the County Treasurer has a considerable amount of money on hand to distribute under this act, we will appreciate your early advice."

Section 9959, Laws of Missouri, 1933, page 428, reads as follows:

"When real estate has been sold for taxes or other debt by the sheriff or collector of any county within the state of Missouri, and the same sells for a greater amount than the debt or taxes and all costs in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff or collector of the county, when such sale has been or may hereafter be made, to make a written statement describing each parcel or tract of land sold by him for a greater amount than the debt or taxes and all costs in the case, and for which no owner or owners, agent or agents can be found, together with the amount of surplus money in each case, which statement shall be subscribed and sworn to by the sheriff or collector making the same before some officer competent to administer oaths within this state, and then presented to the county court of the county where such sale has been or may hereafter be made; and on the approval of the statement by the court, the sheriff or collector making the same shall pay the said surplus money into the county treasury, take the receipt in duplicate of said treasurer for said overplus of money and retain one of the said duplicate receipts himself and file the other with the county court, and thereupon the court shall charge said

treasurer with said amount. And said treasurer shall place such moneys to the credit of the school fund of the county, to be held in trust for the term of twenty years for the owner or owners or their legal representatives. And at the end of twenty years, if such fund shall not be called for, then it shall become a permanent school fund of the county. County courts shall compel owners or agents to make satisfactory proof of their claims before receiving their money: Provided, that no county shall pay interest to the claimant of any such fund."

In construing this section, we are of the opinion that persons who are rightful claimants to funds which have been lodged with the county treasurer, as is designated under the aforesaid section, must appear before the county court of the county, and make positive proof to the county court in order to substantiate their right to said money. Whereupon, it is the duty of the county court to enter its judgment of record, setting forth the court's findings. Upon the certification of the judgment of the county court to the county treasurer, he should, in compliance with its order and judgment of record, pay the moneys to the respective claimants.

We cite Section 9958(b), Laws of Missouri, 1933, page 441, merely for the purpose of showing the legislative intent where tax moneys are to be refunded by the county treasurer. It will be noted by reading this section that the legislature has been consistent in providing a method for county treasurers to refund money.

"No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have

been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and for the first two enumerated causes, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the county court."

CONCLUSION

It is our opinion that a county treasurer can only pay surplus moneys, derived from the sale of lands, to claimants who have made strict proof of their right to same before the county court, and the county court has found, through a judgment of record, that they are the rightful claimants, and certified said order and judgment to said treasurer.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

COVELL E. HEWITT
(Acting) Attorney General

BRC:VC