

TAXATION AND REVENUE:

Right of owner of real property sold for delinquent taxes to redeem without reimbursing purchaser at tax sale for repairs made prior to expiration of redemption period.



November 29, 1945

11/30

Honorable Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Sir:

Reference is made to your letter dated November 21, 1945, requesting an official opinion of this office, and reading as follows:

"I am in receipt of the following letter, requesting an opinion from your office, and I will appreciate it if you will comply therewith at your earliest convenience:

"I am requesting you to write the Attorney General of Missouri regarding the following:

"There were two pieces of property, in the name of Jesse Clay, Estate, sold at the Collector's Delinquent Tax Sale on November 1, 1943, to W. S. Steverson and Wife, for which a Tax Certificate was issued. This being the First Sale.

"After the first year elapsed, W. S. Steverson, the holder of the Tax Certificate, did extensive repairs on the house of this property, amounting to approximately \$500.00.

"On October 25, 1945, the heirs of the Jesse Clay Estate, deposited with this Office \$139.55, the full amount necessary to cover Purchase Price, all Taxes to date, and 8% Interest, saying they wished to redeem the above property.

"W. S. Steverson, the purchaser of Tax Certificate, was notified to bring in the Tax Certificate and accept payment of the redemption money involved. To date, he has failed to do so, and demands payment for all repairs made before he releases the Tax Certificate.

"The Attorney for W. S. Steverson has filed an itemized account for the repairs made, with this office, and contends that the property cannot be redeemed without payment of the said repairs.

"Please advise what procedure the Collector should take in this matter. Is he responsible for the collection of the improvements made, or shall the redemption of this property be completed without the return of the Tax Certificate?"

Your inquiry is primarily concerned with the procedure to be taken by the collector upon redemption of the real property previously sold for delinquent taxes, and you have further proposed the collateral question as to the duties of such collector with respect to improvements made subsequent to the sale but prior to the date of redemption.

The scheme for the redemption of real property sold for delinquent taxes is found in Sections 11145 and 11148, R. S. Mo. 1939.

Section 11145, R. S. Mo. 1939, reads as follows:

"The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: 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. Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his heirs or assigns, at the last postoffice address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time."

Section 11148, R. S. Mo. 1939, reads as follows:

"When lands sold for taxes, or any portions thereof, shall be redeemed, the county collector shall insert a memorandum of such redemption on the record of the certificate of purchase applicable thereto, stating the quantity or description of the portion redeemed, if not the whole, the date thereof, and by whom made, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming. The person redeeming shall then present to the county clerk the certificate of redemption and the county clerk shall then enter on his record of sales of land for delinquent taxes the recital of such redemption, the date thereof, and the person redeeming."

You have stated in your letter of inquiry that the amount tendered in this particular case to the collector is sufficient to comply with the requirements of Section 11145, R. S. Mo. 1939, quoted supra. We, therefore, believe that the necessary steps to be taken by the collector are those outlined in said section and Section 11148, R. S. Mo. 1939, also quoted supra. Such steps to be taken are, in substance, the mailing of the notice to the purchaser, his heirs or assigns, of the deposit for redemption, the insertion of a memorandum of such redemption on the record of the certificate of purchase applicable thereto, showing the date when such redemption was made and by whom, signing the same officially, and delivering to the redeeming owner a certificate of such redemption having been made. These are the sole duties imposed upon the collector by the statutes.

Your additional inquiry as to whether or not the collector is responsible for the collection of compensation for improvements made on the property prior to redemption is somewhat ambiguous. In the body of your letter of inquiry you have referred to the expenditure as having been for "repairs," while in the last paragraph you have designated such expenditure as having been for "improvements."

By the provisions of the statutes, only compensation for improvements may be recovered by the purchaser of the tax certificate, and then only for improvements made at certain times. We direct your attention to the provisions of Section 11147, R. S. Mo. 1939, which reads as follows:

"In case any lasting and valuable improvements shall have been made by the purchaser at a sale for taxes, or by any person claiming under him, and the land on which the same shall have been made shall be redeemed as aforesaid, the premises shall not be restored to the person redeeming, until he shall have paid or tendered to the adverse party the value of such improvements; and, if the parties can not agree on the value thereof the same proceedings shall be had in relation thereto as shall be prescribed in the law existing at the time of such proceedings for the relief of occupying claimants of lands in actions of ejectment. No compensation shall be allowed for improvements made before the expiration of two years from the date of sale for taxes." (Emphasis ours.)

We believe from the wording of the statute quoted that the collector has no concern with the collection of compensation for such improvements made. You will note that the statute speaks of the land whereon such improvements have been made having been "redeemed as aforesaid," and further mentions that the premises shall not be restored to the person redeeming until such compensation for improvements shall have been made. This seems to indicate that the right to redeem is not conditioned upon the payment of the compensation for improvements made within the time limited, but goes only to the right of the person so redeeming to be restored to the possession of the premises. It becomes an adversary matter between the person redeeming and the person having made such improvements.

That this is the proper construction to be placed upon this statute is borne out by the further provisions therein relating to the method of determining the value of such improvements. It is provided that the same proceedings for the determination of the value of such improvements shall be had as is prescribed for the relief of occupying claimants in actions of ejectment.

The ejectment statute referred to is Section 1548, R. S. No. 1939, which reads as follows:

"If a judgment or decree of dispossession shall be given in an action for the recovery of possession of premises, or in any real action in favor of a person having a better title thereto, against a person in the possession, held by himself or by his tenant, of any lands, tenements or hereditaments, such person may recover, in a court of competent jurisdiction, compensation for all improvements made by him in good faith on such lands, tenements or hereditaments, prior to his having had notice of such adverse title."

The legislative intent seems to be to restrict recovery for "improvements" and not for "repairs." We find that these words have severally acquired reasonably fixed legal meanings. We quote from Words and Phrases, Perm. Ed., Vol. 20, page 330:

"The word 'repair,' as defined by Webster:
'Act of repairing; restoration or state of being restored, to a sound or good state after

decay, waste, injury, etc.'-- is applied by courts in the construction of statutes and contracts. The word 'improvement,' defined by the same authority as 'a valuable addition or betterment as a building, clearing, drain, fences, etc., on land,' is a broader word than 'repair,' but includes the latter and is also practically applied by the courts."

In view of the fact that in each instance it would perhaps become necessary to determine from the facts whether or not a particular type of work done or materials used upon real property constituted such an "improvement" as might serve as the basis for recovery of compensation therefor, we believe that the Legislature has adopted the present scheme so that such matters might be determined in actions between the person redeeming such real property and the person making claim for such improvement.

CONCLUSION

In the premises, we are of the opinion that upon receipt by the collector from a person having the right to redeem real property sold for delinquent taxes, of the full sum of the purchase money named in the certificate of purchase relating to such real property, and all the costs of the sale, together with interest at the rate specified in such certificate, with all subsequent taxes which have been paid on such real property by the purchaser, his heirs or assigns, with interest computed thereon at the rate of eight per centum per annum, and all costs incident to entry of recital of such redemption on the records of the collector, it becomes the duty of the collector to mail to the purchaser, his heirs or assigns, at the last postoffice address, if known, of such purchaser, his heirs or assigns, or if such postoffice address be not known, to the address of the purchaser shown in the record of the certificate of purchase, notice that such deposit for redemption has been made. We are further of the opinion that upon such redemption having been made, the collector shall further make the necessary memorandum of such redemption on the record of the certificate of purchase applicable to such real property, sign the same in his official capacity, and deliver to the person redeeming a certificate of such redemption having been made.

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We are further of the opinion that the collector has no duties in connection with the collection of compensation for improvements made on such real property subsequent to the sale of the same for delinquent taxes, as such matters are to be determined either by agreement between the person redeeming and the purchaser of the tax certificate or by court action as provided by Section 11147, R. S. Mo. 1939.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

W. O. JACKSON
(Acting) Attorney General

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