

TAXATION: Publication for sale must be made in reasonable time before date of sale under Senate Bill 94, Laws of Mo. 1933, page 445.

November 3, 1934. 11-5



Hon. Tom Carlton
Treasurer & Ex-Officio Collector
Barton County
Lamar, Missouri

Dear Mr. Carlton:

Acknowledgment is herewith made of your request for an opinion of this office reading as follows:

"We only have a very few tracts of land that have delinquent taxes for 1928, and our Prosecuting Attorney has advised us that if we prepare a list of 1928 and 1929 taxes and publish them before the last day of the year for next November 1935 sale, we are within the statutes and I want to know if that is your opinion also."

A portion of Section 9952B, page 430, Laws of Missouri, 1933, referring to the publication of the lists of delinquent lands and lots, provides as follows:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November."

It appears that the object of the delinquent list of lands and lots is to serve two purposes. First, to notify the delinquent taxpayer that delinquent taxes remain unpaid against his land and that unless the taxes are paid the tax certificate will be sold therefor; and second, to advise any party who might be interested in the purchase of the delinquent tax certificate as to the location of the land for which the certificate is to be sold, and the amount of taxes, penalties and costs due thereon. It should be kept in mind that the purpose

of any notice should have some reasonable relation to the transaction or proceeding of which it purports to give notice, and unless such relationship exists the notice will have failed to serve its purpose.

While it is true that the foregoing section provides that the last publication shall be at least fifteen days prior to the First Monday of November, this provision must be given a reasonable construction so as to effect the purpose contemplated by the legislative act. It was undoubtedly intended by the Legislature that the last publication should be made on some day between the 13th and 20th of October. A publication so made would give the delinquent taxpayer a last opportunity in which to raise a fund sufficient to redeem his property, and would also notify prospective bidders of the sale a reasonable time prior to the sale, so that they could make necessary arrangements to appear and bid at the sale. The notice as suggested in your communication would be entitled unconstitutional for either of the objects suggested because too great a time elapses between the date of the publication of the notice and the date of the sale. True, such a construction might be placed upon the bare words of the statute, but as stated in the case of *State ex rel. vs. Trustees of William Jewell College*, 234 Mo. 299-313, quoting from *Sutherland on Statutory Construction*:

" * * * A thing which is within the object, spirit and the meaning of the statute is as much within the statute as if it were within the letter. Conversely, a thing which is not within the intent and spirit of a statute is not within the statute, though within the letter. "

In our opinion this provision of Senate Bill 94 must be given a reasonable construction, one which will effectuate the purpose of the act. As stated in *Bowers vs. Kansas City Public Service Company*, 41 S. W. (2d) 810-815:

" * * * In construing a statute, the court must, if possible, give effect to the whole and every part thereof, provided the interpretation reached is reasonable, and not in conflict with the legislative intent. * * * "

Hon. Tom Carlton

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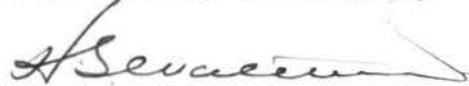
November 3, 1934.

The construction suggested in your communication fails to satisfy either of the requirements of the foregoing rule.

CONCLUSION.

It is therefore the opinion of this office that the publication suggested in your letter would be insufficient and would not be a valid foundation for a lawful sale next November of delinquent taxes under the provisions of Senate Bill 94, page 425 et seq. Laws of Missouri, 1933.

Respectfully submitted,



HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

ROY McKittrick
Attorney General

HGW:MM