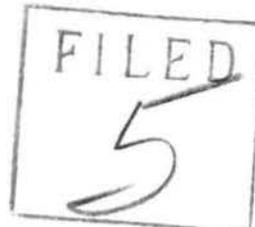


TAXATION AND REVENUE:

Drainage taxes not cut out by sale under Senate Bill 94 for state and county taxes.

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January 8, 1935.



Mr. R. F. Baynes
Tax Attorney
New Madrid County
New Madrid, Missouri

Dear Mr. Baynes:

In accordance with your request we render you an opinion on the following questions:

"(1) What will be the status of delinquent drainage taxes after sales had for State and County taxes for the County Collector in November under the so-called Jones Tax Law?

(2) In the event judgment is obtained prior to November for drainage taxes, what effect will the sale for State and County taxes have on the judgment for drainage taxes?"

From other portions of your communication you state that you are interested in County Court Drainage Districts and we shall therefore discuss the law as applied to such districts, although from our cursory examination of Circuit Court Drainage District laws there does not appear to be any distinction between County Court Districts and Circuit Court Districts insofar as your inquiry is concerned.

I.

SALE FOR STATE AND COUNTY TAXES UNDER JONES MUNGER ACT DOES NOT ENTIRELY ELIMINATE DRAINAGE DISTRICT TAXES.

County Court Drainage Districts are provided for in Article II, Chapter 64, R. S. Mo. 1929. The entire procedure for the establishment of such districts is set out in said article. In respect to the drainage district assessments levied to provide for the improvements Section 10828 provides in part:

"All drainage taxes provided for in this article, including maintenance taxes, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee to be fixed by the court and taxed as costs in the action brought to enforce payment shall from date of the levying of the same by the county court as provided herein, until paid, constitute a lien, to which only the lien of the state for state, county, school and road taxes shall be paramount, upon all of the lands assessed, and shall be collected in the same manner as state, county and school taxes upon real estate are collected." * * * "

By specific provision it is therefore declared that drainage taxes provided for in the article concerning county court drainage districts are to be inferior to state taxes for state, county and school and road purposes. Therefore, it appears that the purchaser of the tax certificate under the Jones Munger Act, otherwise known as Senate Bill 94, becomes possessed of an interest which shall be equal to a first line on the property involved. What effect if any this is to have upon the drainage district taxes is to be determined by the nature of this interest and what rights, if any, the drainage district has after such sale.

We must remember that the lien for taxes is not changed by the Jones Munger Act, and that after all that act is but a procedural statute for the enforcement of liens which are of the same nature after the passage of this act as they were before. We therefore look to the statutes establishing these liens and decisions concerning them. Decisions determining the nature of state and county liens and drainage tax liens, and the extent and priority would still be applicable under the Jones Munger Act insofar as the sale proceeding itself is concerned. One of the most recent cases determining the respective priority of drainage district assessments and state and county taxes is that of Little River Drainage District vs. Sheppard, a decision of the Supreme Court in Banc, reported at 7 S.W.(2d) 1013. In this case the plaintiff brought suit to collect delinquent drainage taxes assessed for the years 1921 to 1927. The answer alleged as a complete defense that the land was sold under judgment of the circuit court for general state and county taxes due for the years 1921 to 1924, and defendant claimed under that tax title. The question of the priority of these taxes and respective rights of the parties after the sale for state and county taxes were the problems determined bearing upon the issues here considered. The Court held in effect that

as the drainage district was not a party to the suit it was not bound by the decision and that its lien for drainage district taxes was not cut out by such sale but that it could redeem the property from the purchasers at such sale, or could proceed to enforce its lien for drainage taxes and the purchaser at such sale could then redeem the property by paying the state and county taxes for which the property had been sold. In the course of the opinion the Court stated, l. c. 1014:

"The lien for state and county tax shall be paramount. The statute does not say that it shall necessarily destroy the district lien for special taxes. The plaintiff district, according to the stipulation and the finding of the trial court, was not made a party to this proceeding. No person or corporation can be affected by a proceeding to which he or it is not made a party, and that applies to tax suits. For instance, the state's lien for taxes is superior to a prior mortgage lien, and a sale under such tax lien conveys title to the purchaser but does not affect the mortgagee's right to redeem." * * *

The foregoing decision is in respect to taxes levied by a drainage district organized by the Circuit Court. However, a comparison of Section 10764 R. S. Mo. 1929 with Section 10828 hereinbefore quoted in part, shows that there is no material distinction between the lien for drainage taxes levied by a circuit court district and the lien for drainage taxes levied by county court districts. We therefore consider this case directly in point.

We shall now turn to the Jones Munger Act to determine what provision is there made for the redemption of property after the sale of the tax certificate. Section 9856A, page 437, Laws of Missouri 1933, provides in part 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

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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.* * * *

By the foregoing provisions any person having an interest in the land is privileged to redeem within two years after the sale by complying with the provisions therein set out. This section should be construed liberally so as to encompass within its terms all persons or parties having an interest in the land. It must be construed as permitting the redemption from such sale by the drainage district or by the purchaser under the drainage district sale.

While the foregoing covers the matter of your inquiry we direct further attention to Section 9957, page 438, Laws of Missouri, 1933. This section provides:

"If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase,* * * *the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold.* * * *"

The purchaser of a tax certificate at a sale held pursuant to the Jones Munger Act is authorized to obtain a clear title to the land described in the certificate at the expiration of two years of the date of sale if by that date the land has not been redeemed by the provisions of this section. The title which he obtains is to be free and clear of all encumbrances, charges or taxes except a lien which was superior to the lien of the taxes for which the land was sold. Therefore, in the event that redemption is to be made under the provisions of this act, it should be made within two years of the date of sale, for if the purchaser of the certificate obtains a deed therefore it appears that he takes the property free and clear

of all encumbrances and taxes existing at the time, and which were inferior to the taxes for which the land was sold.

CONCLUSION.

It is therefore the opinion of this office that a sale for state and county taxes under the Jones Munger Act does not in itself cut out the lien of drainage districts for drainage taxes.

II.

THE LIEN OF DRAINAGE TAXES IS NOT EFFECTED BY THE ENTRY OF A JUDGMENT THEREFORE, NOR IS THEIR RELATION TO STATE AND COUNTY TAXES EFFECTED THEREBY.

It is recognized that the lien of a judgment for taxes is but an extension of the tax lien. The lien therefor dating from the assessment or levy of the tax as the case may be. Under the provisions of Section 10828 hereinbefore quoted, it is provided that the lien of drainage taxes shall date from the levy of the same by the county court until paid. It then provides that such lien shall be paramount except for the lien of the state for state, county, road and school taxes. Therefore, the lien obtained by the entry of judgment is no better or worse than the lien given the drainage district taxes. It therefore appears that the obtaining of the judgment prior to the date of sale does not affect one way or the other the substantive rights or priorities. The purchaser at the sale for drainage taxes would be entitled to the rights of redemption provided for in the sections of the Jones Munger Act hereinbefore referred to.

In a most recent case decided by Division No. 2 of the Supreme Court styled Dyer et al vs. Harper et al. the Court considered interest and rights of a purchaser at a sale for state and county taxes and the purchaser at the sale for drainage district taxes. The sales were held on the same date. The Sheriff fixed a sale for state and county taxes and sale for drainage district taxes, and on the same date the sheriff executed deeds to both purchasers. The drainage district was not made a party to the suit for state and county taxes. The Court in holding that the purchaser at the sale for drainage district taxes had the right to redeem the property from the sale for state and county taxes stated:

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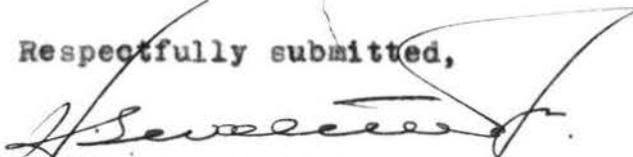
"The lien created by the judgment for state, county and school taxes was superior to the lien for drainage taxes. In the suit to enforce the collection of state, county and school taxes the Big Creek Drainage District No. 2 was not made party and, therefore, its lien was not destroyed by a sale under such a judgment. At a sale under a judgment for drainage taxes, the purchaser would acquire the right to redeem in an action against the holder of the tax title, by making a proper tender of the amount due the holder of the tax title."

The foregoing case has not yet been reported.

CONCLUSION.

It is therefore the opinion of this office that the obtaining of a judgment for drainage taxes would not effect favorably or unfavorably the priority of state and county taxes and drainage district taxes or the rights of the purchasers at sales of the land upon which the taxes were levied.

Respectfully submitted,


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APPROVED:

ROY McKITTRICK,
Attorney General

HGW:MM