

TAXATION: Owner entitled to redeem within two years after tax sale. Mortgagee, although purchasing at tax sale, can not prevent same.

7-29

July 25, 1935.



Mr. G. R. Breidenstein,
Kahoka, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"I would like to have the opinion of your department upon the following matter which is now pending with our County Collector of Revenue.

"About nine months ago a mortgage holder bought at a Tax Sale, a piece of land on which he held a mortgage. The owner at that time was the son and only heir of a father who gave the mortgage. This son, the present owner, is now ready to redeem the land from the tax sale and offers the money to our Collector. The purchaser at the tax sale contends that the owner has no right to redeem since he, the purchaser, was a mortgagee and also had an interest in the land. Does the owner have a right to redeem, and should the Collector of Revenue accept his money on the redemption?"

Section 9956a of the Jones-Munger Law, Laws of 1933, page 437, provides the method of redeeming lands from a tax sale and is 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

July 25, 1935.

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 redeptioner after that time."

Section 9960c provides that a mortgagee may pay the back taxes and that thereupon the amount of his mortgage is to that extent increased, and the increased total debt shall bear interest at the rate specified in the mortgage.

The mortgagee is amply protected by said sections. He can pay the tax if he so desires and he continues to have the same security for his loan that he had prior to the

July 25, 1935.

proposed sale except that he has his secured debt increased by the amount of said taxes paid by him.

The Jones-Munger Law was not in any sense intended to perform the duties of a foreclosure of a deed of trust. The law is well defined as to the things that are to be done in foreclosing a deed of trust.

The tax sale in no way affects the lien of the deed of trust except that the taxes must be paid.

The holder of the deed of trust has, independent of the tax sale, his right of foreclosure and he must exercise it in the regular way in order to acquire title under it. He can not prostitute the Jones-Munger Law and thereby acquire under its operation the rights that he would be entitled to as purchaser under the foreclosure of his deed of trust.

CONCLUSION

It is our opinion that the owner has the right to redeem the land any time within two years after the sale thereof, and it is the duty of the collector to accept the tender if made within that time.

The fact that the mortgagee purchases the tax certificate at the sale does not preclude the owner from redeeming.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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