

TAXATION AND REVENUE:

Certificates must be sold at public sale under Senate Bill 94 and not at private sale.

3-22

March 21, 1935.



Hon. N. Elmer Butler  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Sir:

Acknowledgment is made of your request for an opinion of this office dated March 13, 1935, wherein you request the following information:

"On land that has been advertised for sale for delinquent taxes and the taxes dating back to 1928, but the suit was commenced prior to December 31st 1934, publication made and put up for sale at a regular term of Court, no bid was received. Will this be carried on the tax books as delinquent until three successive attempts are made provided no bid amounts to as much as the taxes and costs.

After the land has been offered to the highest bidder and no bid made can the collector sell at a private sale to a bidder for as much as the tax and costs?"

I.

SUITS FOR DELINQUENT TAXES MAY  
BE DISMISSED AND TAXES COLLECTED  
UNDER SENATE BILL 94.

Delinquent State and County taxes are to be collected under the provisions of Senate Bill 94, page 425, Laws of Missouri 1933. However, under the provisions of Section 9962b, page 444, it is distinctly provided that suits which had theretofore been instituted for the collection of delinquent taxes could, in the discretion of the county collector, be dismissed and the delinquent taxes collected by virtue of the provisions of the new law. The parts of this section so providing read as follows:

"\* \* \* \*as to suits for delinquent taxes instituted, but not merged in judgment, at the effective date of this act the collector shall have the right to proceed to final judgment and foreclosure of the tax lien under the provisions of the law as it existed prior to the passage of this act, or such collector may, in his discretion, dismiss such suits and proceed to foreclosure of the tax lien under the provisions of this act, subject to the preservation of rights to all valid costs and commissions that may have already attached in such character of suits under the law as it existed prior to the passage of this act."

Accordingly there is no question as to the authority to dismiss the suit and to advertise and sell the land under the provisions of the new law.

## II.

LAND MUST BE OFFERED THREE  
CONSECUTIVE TIMES IF IN-  
SUFFICIENT BID IS RECEIVED.

All taxes which are to be collected under the new law, Senate Bill 94, are in the same classification insofar as procedure respecting them is concerned. The fact that suit had been instituted in no way varies the procedure for the collection of such taxes in the event it is determined that collection should be made under the provisions of the new law. Sections 9953 and 9953a, page 432, set out the procedure in the event bids sufficient to pay the taxes, interest and costs are not received. These sections are as follows:

"Section 9953. If at the first offering of sale of any tract of land or lot under the provisions of this act no person shall bid therefor a sum equal to the delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note a recital thereof in his record containing the list of delinquent lands and lots, and said tracts of land or lots shall be again offered for sale, at the next sale of delinquent lands and lots as in this act provided, if such lands or lots be at such time delinquent. If at the second offering for sale no person shall bid therefor a sum equal to the then delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall

note such fact upon his record of the sale, and the county collector shall enter a recital of such fact in his record book containing the list of delinquent lands and lots."

"Section 9953a. Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell the same to the highest bidder, and the purchaser thereof shall acquire thereby the same interest therein as is required by purchasers of other lands at such delinquent tax sales."

It therefore appears that in the event sufficient sum is not bid at the first offering to pay the taxes, interest, penalty and costs, the land shall be again offered for sale at the resale "as in this act provided" and if at a second offering an insufficient bid is received, then it shall be offered at the next regular tax sale at which third and last sale the certificate shall be sold for such sum as can be obtained irrespective of the amount of penalties, interest and costs. It is to be noted that no provision whatsoever for private sale is made but on the contrary a complete uniform system has been set up whereby the certificate shall ultimately be sold.

It is to be noted that under Section 9957a, page 438, a certain form of deed has been set out for execution by the collector in the event the lands are not redeemed. This deed sets forth that the lands had been sold at public auction at the Court House Door. Therefore, it would appear that no proper deed could be given to the property unless this procedure had been complied with and the land actually sold by virtue thereof. It is evident that private sales were not contemplated by the framers of this law.

This problem has heretofore been before the Supreme Court in the case of *Bender v. Dungan*, 99 Mo. 136. In this case the law provided that lands remaining unsold and unredeemed in 1875 should be offered for sale at the regular sale of that year and if not

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then sold should be offered to the highest bidder, and if no bid obtained at such last sale the forfeiture, or liability for taxes, should be cancelled. It appeared that no second offer of the land involved was made but that subsequently such land had been sold at private sale. The Court in holding such private sale illegal and void stated, l. c. 130:

"Again, section 236 (Laws, 1872, p. 131) provides, among other things, that, at the regular sale in the year 1875, lands which had been previously forfeited, and then remained unsold and unredeemdd, should, after being offered for the amount due thereon and not sold, be then and there immediately offered and sold to the highest bidder, but not for a greater sum than was due thereon including costs, etc., and that the former forfeitures of such property, as would not sell, should be cancelled. The land in suit had been, as we have seen, forfeited for the amounts due for the taxes of the years 1873 and 1874, and, if not sold at the regular sale in 1875 should have been cancelled at that time, so that this private sale of the land thereafter in October, 1876, received in the deed, was, we think, illegal and void.

CONCLUSION.

It is the opinion of this office that lands or certificates thereon which have been offered for sale once without a sufficient bid being made cannot then be offered and sold at private sale even though the amount of tax, penalties and interest be offered at such sale.

Respectfully submitted,

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APPROVED:

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HGW:MM