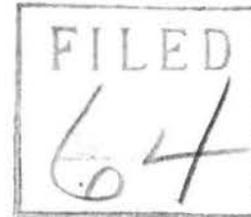


TAXATION: Refund to purchaser at void sale payable from  
County Treasury.

12-23  
December 21, 1935.



Honorable Merrill E. Montgomery  
Prosecuting Attorney  
Milan, Missouri

Dear Sir:

Acknowledgment is herewith made of your request  
for an opinion of this office on the following matter:

"In the fall of 1934 the County Treasurer of Sullivan County acting as Ex-Officio County Collector sold certain lands for delinquent taxes in accordance with the provisions of the Session Acts of 1933, Secs. 9945-9963e, pages 425 to 449. In one case it was later discovered that the Township Collector had by error marked one tract delinquent; in another instance a purchaser objects to his tax certificate some 12 months after the sale on the grounds that the description under which the lands were sold was so imperfect as to fail to describe the land or lots with reasonable certainty.

Relying upon Sections 9958a and 9958b, p. 441, the County Court made an order to refund the bids to the holders of the above tax certificates. The Treasurer had distributed this money among the various funds, such as, road and bridge funds, county revenue fund, special road district and school funds to the particular districts. The County Court order did not instruct the Treasurer as to what fund or funds this amount should be taken from; the statute, sec. 9958b merely directs the county treasurer to refund the purchaser the amount of his bid, with interest in two instances, out of the county treasury, on order of the county court.

The County Treasurer is at a loss to know where this money should be drawn from, i. e. should it come out of the general revenue fund, or should it be deducted in proportionate amounts from the various funds into which the original purchase money was distributed? If it is the latter plan, then the collector will have to show in his next settlement that certain funds are to be deducted from the various items to be distributed among his various funds among the various subdivisions. It has also been suggested that the county court set out ~~the~~ the county revenue fund an amount to pay these items, then next year when these land descriptions have been corrected and resold for taxes, this amount could be restored to the county revenue fund and thus avoid complications in the settlements. In the opinion of your office what would be the proper manner in which to handle this matter under the present law?"

Section 9958b, page 441, Laws of Missouri 1933, reads as follows:

"No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and for the first two enumerated causes, the money paid by the purchaser at such sale shall be refunded, with interest, out of the county treasury, on order of the county court."

The only direction provided for above is that the money should be refunded to the purchaser "out of the county treasury". There is no time limitation contained in the act limiting the time within which claims for refund must be made. It therefore appears that it was the intention of the legislature to insure any purchaser that in the event it was impossible for him to collect the tax from the taxpayer because the tax had theretofore been paid or because the description did not identify any tract of land, that the purchaser would receive a refund of the amount paid the county for such certificate with interest on his money.

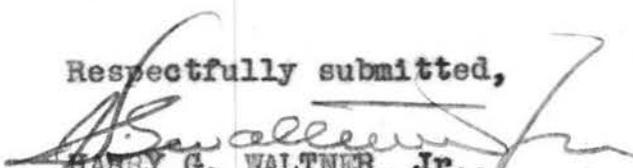
There seems to be no similar provisions of any previous Missouri law which has been construed by our Appellate Courts. However, in the case of Spalding Manufacturing Company vs. Board of Commissioners of LaPlatta County, 168 Pac. 84, the Supreme Court of Colorado passed upon a similar provision of the Colorado law, Section 5750 Revised Statutes 1908, and held that the failure of the County Collector to pay the money over to the County did not defeat the right to a refund which was to be paid from the county treasury. In the case of Tisdale vs. Ward County, 127 N. W. 512, the Supreme Court of North Dakota construed Section 1585 Revised Codes 1905, which provided for a refund out of the County Treasury of any amount paid on an order from the County Auditor, but also provided:

"And a pro rata share of the money so refunded shall be charged to the State and to any incorporated city, town, village or school corporation which it may have received any part of such void tax."

Thus the Legislature of North Dakota gave specific and adequate instructions as to the manner in which the county was to obtain reimbursement for sums which might be advanced by the County and in equity and common justice should be paid by the other taxing districts. We cannot say what the Missouri Legislature may have had in mind by requiring the county to refund the sums paid as provided for in Section 9958b, but at any rate the Legislature has specifically directed that these sums be paid out of the County Treasury and has made no provision whatsoever for charging any proportionate part to school districts, road districts or other taxing bodies. No provision has been made for the charging of any proportionate part of this to the various districts involved.

We are of the opinion that it is proper for the County Court to refund the required sums from the County Treasury, which sums may later be repaid to the County in the event taxes are subsequently recovered by virtue of a sale of the land taxed by a proper description.

Respectfully submitted,

  
HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General

HGW:MM