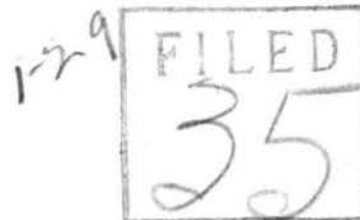


TAXATION: Who entitled to surplus received from tax sale.

January 29, 1936.



Honorable J. W. Guerrant  
Collector of Callaway County  
Fulton, Missouri

Dear Sir:

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

- "1. Where land is sold for taxes and redeemed by one of the heirs, who gets the overplus, the one that redeems or the heirs?
2. Where land is sold for taxes with a mortgage, who gets the overplus, the one who holds the mortgage or the one whose name is in it?
3. When land is sold for taxes and no one claims the overplus what becomes of it; is the purchaser entitled to it?"

We shall deal with your questions in the order in which they are asked.

I.

OWNER IS ENTITLED TO  
SURPLUS OF TAX SALE IF  
PROPERTY IS CLEAR.

Section 9953c, page 433, Laws of Missouri 1933, provides in part as follows:

"Where such sale is made, the purchaser of such sale shall immediately pay the amount of his bid to the collector, who shall pay the surplus, if any, to the person entitled thereto;  
\* \* \* \*"

Section 9959, page 428, Laws of Missouri 1933, provides in part as follows:

"When real estate has been sold for taxes or other debt by the sheriff or collector of any county within the state of Missouri, and the same sells for a greater amount than the debt or taxes and all costs in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff or collector of the county, when such sale has been or may hereafter be made, to make a written statement describing each parcel or tract of land sold by him for a greater amount than the debt or taxes and all costs in the case, and for which no owner or owners, agent or agents can be found,\* \* \* \*"

While Section 9953c does not specifically name the person to whom the surplus shall be paid, it describes such person as "the person entitled thereto", and from the provisions of Section 9959 it is quite apparent that "the person entitled thereto" is, in the usual case, "the owner or owners, agent or agents", referring of course to the agent of the owner. This construction is consistent with the general rule as laid down in 61 Corpus Juris, 1213, Section 1641. Here it is stated:

"As a general rule the surplus remaining after sale of property and the payment of the taxes, interest and costs, belongs to the owner of the property at the time of the sale, subject to such claims as may be allowed to mortgagees and lienees, and will be paid over to him provided he applies for it within the proper time."

By the general rule and by any rule of justice and fairness the person owning the property at the time of the sale is entitled to any overplus which may be big for the certificate of purchase. This is certainly equitable in view of the fact that it will be the owner who will have to redeem the property from the sale by paying the full amount of the certificate of purchase, which amount will include any surplus or overplus. Thus we see that the question as to who is entitled to the surplus is not to be determined by the fact as to who redeems the property. If several heirs were the owners of the property at the time of the sale the overplus should be paid to them in proportion to their respective interests and the fact that one of them may have redeemed the property has no bearing upon the question as to who is entitled to the overplus. That question is determined by the ownership of the land at the time of the sale.

#### CONCLUSION.

It is therefore the opinion of this office that in the event clear property is sold for taxes, the owner thereof or the heirs of such owners are entitled to any overplus received from such sale in proportion to their interests.

#### II.

#### WHERE MORTGAGED LAND IS SOLD FOR TAXES MORTGAGEE IS ENTITLED TO OVERPLUS.

On the 5th day of April 1935, this office rendered an official opinion to Joseph T. Tate, Prosecuting Attorney of Gasconade County, in which the following conclusion was reached:

"In conclusion, it is our opinion that where a surplus exists after the sale of real estate for taxes, such surplus should be paid to the owner of the property, if only one person has any interest therein; that if the collector is satisfied that there is a valid recorded unsatisfied mortgage against the property, payment to the extent of the then mortgage debt could be made to the mortgagee and should not be paid to the mortgagor, and that if there is any doubt about the person to whom payment should be made, the safest procedure for the collector would be to turn the money

into the county treasury under R. S. Missouri 1929, Section 9959, as amended by Laws of 1933, page 425, 428, leaving proof of ownership to be made to the county court under that section."

This conclusion is in accord with the general rule hereinbefore referred to. We herewith enclose to you a copy of this opinion for examination, and will not go further into this question as that ruling disposes of your problem.

### III.

PURCHASER AT TAX SALE NOT  
ENTITLED TO OVERPLUS  
ALTHOUGH LAND UNREDEEMED.

Section 9953c, page 433, Laws of Missouri 1933, in addition to the part thereof heretofore quoted, provides that if the county collector has any doubt as to who is entitled to the surplus or if any dispute arises as to who is entitled to such surplus, the same shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto. However, Section 9959, page 428, Laws of Missouri 1933, appears to specifically answer your question. This section provides:

\*When real estate has been sold for taxes or other debt by the sheriff or collector of any county within the state of Missouri, and the same sells for a greater amount than the debt or taxes and all costs in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff or collector of the county, when such sale has been or may hereafter be made, to make a written statement describing each parcel or tract of land sold by him for a greater amount than the debt or taxes and all costs in the case, and for which no owner or owners, agent or agents can be found, together with the amount of surplus money in each case, which statement shall be subscribed and

sworn to by the sheriff or collector making the same before some officer competent to administer oaths within this state, and then presented to the county court of the county where such sale has been or may hereafter be made; and on the approval of the statement by the court, the sheriff or collector making the same shall pay the said surplus money into the county treasury, take the receipt in duplicate of said treasurer for said overplus of money and retain one of the said duplicate receipts himself and file the other with the county court, and thereupon the court shall charge said treasurer with said amount. And said treasurer shall place such moneys to the credit of the school fund of the county, to be held in trust for the term of twenty years for the owner or owners or their legal representatives. And at the end of twenty years, if such fund shall not be called for, then it shall become a permanent school fund of the county. County courts shall compel owners or agents to make satisfactory proof of their claims before receiving their money: Provided, that no county shall pay interest to the claimant of any such fund."

There cannot be any doubt as to the procedure you should follow in case no claim is made by the owner to the surplus which may exist from any tax sale. You should make the report or statement provided for and pay the money to the county treasurer. The money is then placed to the credit of the school fund of the county and if no proper claim is made at the end of twenty years it becomes a part of the permanent school fund. The County Court, of course, has jurisdiction over the fund and can pay the same to the owner upon satisfactory proof being made therefor.

Honorable J. W. Guerrant

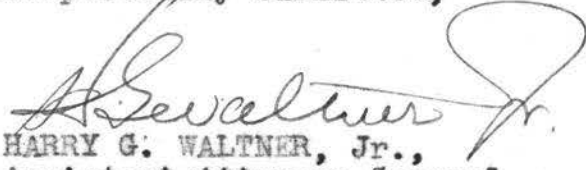
-6-

January 29, 1936.

CONCLUSION.

It is therefore the opinion of this office that in the event the owner or the agent thereof does not claim the surplus existing from any given tax sale, the collector should make the statement provided for in Section 9959, page 428, Laws of Missouri 1933, and after such statement has been approved by the County Court, pay such surplus to the county treasurer, taking receipt in duplicate therefor, and that such surplus should then be placed to the credit of the school fund of the county to be held in trust for the benefit of the person entitled thereto for a term of twenty years, after which it becomes a part of the permanent school fund.

Respectfully submitted,

  
HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

---

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

HGW:MM  
Enclosure.