

- TAXATION: (1) Owner may purchase at tax sale for high bid on third offer.
(2) Proceeds of sale to apply to costs and to be prorated to funds.
(3) Abandonment of suit does not prevent sale of property at third offering for high bid.

10-19
October 16, 1936



Honorable J. B. Greer
County Collector
Pettis County
Sedalia, Missouri

Dear Mr. Greer:

We acknowledge receipt of your communication requesting an opinion of this office on the following matters:

- "(1) Has the property owner the right to buy at tax sale on the third offering at the high dollar?
- (2) When property is sold at tax sale on the third offering at the high dollar, how are the proceeds from the sale to be applied and is court order to be obtained for the balance?
- (3) Where suits were filed several years ago but no judgments taken, and costs have accrued such as Circuit Clerk's costs, Sheriff's costs, Attorney fees, etc., and properties are now offered at tax sale on third offering, do these conditions change the status of the case, or may the same be sold at the high dollar? If so, how should the suit costs, etc., be prorated?"

We shall deal with your problems in the order in which they are presented.

I.

Property owner may purchase at
third offering for a high bid.

After land has been offered for sale on two previous years and no bid sufficient has been made at each of those sales to cover the amount of taxes, interests, penalties and costs then due, the County Collector is authorized at the third offering to sell the certificate of purchase covering said tract to the highest bidder for what it will bring. This procedure is provided for in Section 9953a, Page 432, Laws of Missouri 1933. This Section reads as follows:

"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 acquired by purchasers of other lands at such delinquent tax sales."

This Section places no limitation upon the parties who may bid in said property at the third sale. A careful examination of this law reveals that at no point is any requirement laid down as to who may purchase the land, other than Section 9952c, which requires that no sale shall be made to a person not a resident of the State of Missouri until such person shall file with the Collector an agreement in writing consenting to the jurisdiction of the Circuit Court of the County in which the sale is made and designating some person in said county as agent for the purchaser for the purpose of suit. The failure of the present Act to

speaking on this subject relegates us to the application of general principles and rules to a determination of your question. After careful consideration of the problem involved, we have reached the conclusion that the property owner has the right to buy at the tax sale on the third offering if he makes the high bid for the certificate. To rule otherwise would be to unfairly and unjustly discriminate against the property owner for he would then be the only one who would be disqualified from bidding at the sale. Such classification would be unwise, unfair and in the absence of specific legislation, wholly unwarranted.

In reaching this opinion we are not unmindful of the general statement found at 11 C. J. 1198, Section 1615:

"As a general rule any person under a positive duty to the state or municipality to pay the taxes on a particular tract of land cannot become a valid purchaser at a sale of the property for such taxes, and if he does purchase, it is deemed to be merely a mode of paying the taxes and does not found a new title in any way."

Also, 61 C. J. 1305, Section 1826:

"Ordinarily one who is under a duty to pay taxes cannot add to nor strengthen his title by purchasing land at a sale for such taxes, and an attempt to do so may be regarded simply as a redemption of the land. Thus, ordinarily the owner of land can neither add to nor strengthen his title by omitting to pay taxes on land for which he is liable and then buying the land at the tax sale."

Nor have we disregarded the statements to a similar effect found in the leading text books on the subject of taxation. However, an examination of the authorities which are cited in support of these statements indicate that they have relation to the rights of third parties as affected by the tax sale rather than the right of the State, and are concerned with the legal effect of the sale rather than the bare right of the owner to purchase.

In making your inquiry you are concerned with your duties in relation to the sale and we understand desire to know whether or not you should refuse the bid of an owner of the property at the third sale even though this bid is not in an amount sufficient to pay the whole taxes, interest and costs due. You can only be concerned with your rights and duties in the premises and are not called upon to decide and determine the legal consequence of such a sale. If the facts are such that such sale to the owner amounts to but a redemption of the property, as has been suggested in some of the authorities, that is a matter with which you are not now authorized to act. You should of course, as a representative of the State and County in conducting the sale permit no sale for less than the full amount of the taxes, penalties and costs which has been induced by collusion or fraud as such a sale would clearly amount to a redemption of the property or a payment of the taxes in the amount bid and would subject the property to further sale the following year as contemplated and required by Section 9953b, page 432, Laws of Missouri 1933, which reads as follows:

"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 acquired by purchasers of other lands at such delinquent tax sales."

CONCLUSION

It is therefore the opinion of this office that the property owner has the right to buy the property at the tax sale on the third offering for the highest bid.

II.

Proceeds to be applied
to costs and balance
distributed to fund.

It is somewhat difficult to determine the question you had in mind in paragraph two of your letter. However, in general terms, the proceeds of the sale, when such proceeds are insufficient to cover the entire amount of taxes, penalties and costs, should be applied as follows: (a) To the payment of costs, other than collector's commission. (b) Collector's commission, calculated upon the amount received less amount of costs referred to in "a". (c) The balance of the proceeds should be paid to the various taxing authorities or agencies, such as the State, the County, School District, etc., in the same proportion as the amount received bears to the total amount of tax.

From your view point you are interested in knowing how you shall account for the balance of taxes which have been charged against you. The situation under the Jones-Munger Law is identical in this respect as to the situation as existed under the old law when property was sold for taxes under execution and the proceeds of the execution sale were insufficient to pay the full amount of taxes due. You should obtain a Court order covering this so that you will have no difficulty when making your final settlement and so that the State Auditor's Office may allow you a credit for the difference in the amount of taxes charged against you and the amount which you received at the sale of the property.

The foregoing is concluded from two opinions heretofore issued by this office, the first on January 18, 1934, to the Honorable Edward Gusick, Prosecuting Attorney of Pulaski County, Waynesville, Missouri, and the second dated January 3, 1935, to Honorable W. C. Rose, Prosecuting

Attorney, Putnam County, Unionville, Missouri. I herewith enclose to you copies of these opinions so that you may be fully advised as to the authorities for the conclusions reached.

III.

Court costs preserved though
taxes foreclosed under Jones-
Munger Law.

The Jones-Munger Law makes specific provision for the abandonment of suits for the foreclosure of taxes and proceedings for including such delinquent taxes in the sale of other properties under the new tax law. Section 9962b, page 444, Laws of Missouri 1933, having particular reference to this, reads as follows:

"All lots, tracts and parcels of land upon which taxes assessed or levied prior to the taking effect of this act remain due and unpaid at the date when such taxes would have become delinquent as provided in the act under which they were assessed and levied, and which taxes are not merged in judgment prior to the effective date of this act, shall be deemed to be delinquent under the provisions of this act, and the same proceedings shall be had to enforce the payment of such unpaid taxes, with interest, penalty and costs, and payment enforced and liens foreclosed under and by virtue of the provisions of this act and the same rights of redemption shall attach. For the purposes of foreclosure under this act, the date of delinquency shall be construed to mean the date when the taxes first became delinquent; provided

however, that nothing herein contained shall be construed to affect the right of the county collector to proceed to final judgment and foreclosure for taxes upon which suit had been instituted prior to the effective date of this act, but not in final judgment, nor to prejudice the rights of collection of any costs or commissions attaching in such cases which were valid under the tax law existing at the time of institution of such suits. As to taxes merged in judgment at the effective date of this act the foreclosure of the tax lien and proceedings relative thereto shall be had under the provisions of the law as such law existed prior to the passage of this act, and 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."

It will be noted that in the event the suit is abandoned and the property sold under the Jones-Munger law, rights are preserved "to all valid costs and commissions which may have already attached to such character of suits." Therefore, the collector's and sheriff's costs which had already accrued are preserved, and the attorney fees, which can only be calculated on the amount actually paid into the treasury, are likewise preserved but may only be calculated as just stated. As it is the costs which accrue under the Jones-Munger Law which actually bring about a sale of the property and create a fund from which costs and taxes may be paid, it is our

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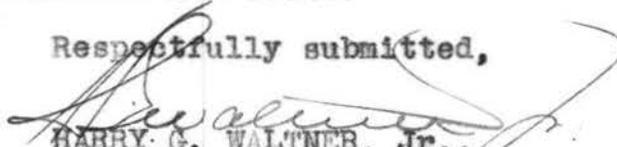
view that the actual costs accruing under the Jones-Munger Law, other than the collector's commission, should first be paid. Next should be paid the costs accruing in the suit instituted but abandoned, other than the attorney's fee and the collector's commission. Third, the attorney's fee and the collector's commission should be calculated, based upon the amount which is to be turned into the Treasury. The balance if any, should then be distributed as suggested under part two of this opinion. The basis for these conclusions is also found in the opinions hereinbefore referred to.

Section 9953a, page 432, Laws of Missouri 1933, authorizes the sale of the certificate to the highest bidder in the event that for two successive previous years no person has bid a sum equal to the delinquent taxes, penalties, interests and costs accrued thereon. This section applies to all sales for taxes which are delinquent under the provisions of the law. By virtue of Section 9962b, Supra, these taxes are delinquent within the meaning of the law if the county collector in his discretion determines to abandon the suits and proceeds to enforce the payment of the taxes under the Jones-Munger law. We are of the opinion that because suit has once been instituted and abandoned does not prevent the properties from being sold for what they will bring on the third offering providing no sufficient bid has been made at the two previous offerings.

CONCLUSION

It is therefore the opinion of this office that the fact that suit had once been instituted for taxes on a given tract of land, which suit was abandoned, does not prevent the sale of such property at the third offering for what it will bring, provided that said tract has been offered at two prior successive sales in previous years at which sales no bid was received sufficient to pay the delinquent taxes thereon, with interest, penalties and costs.

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

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

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