

COUNTY COURT: County Court may purchase certificates of purchase on delinquent tax lands if it desires to take that means of purchasing property for the use and benefit of the county.

71 Mo. 85)
August 19, 1936.



(For case right on this question see city of Affram v. County 71 Mo. 85)

Mr. F. Edwin Pollard
Collector of Revenue
Audrain County
Mexico, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"The Audrain County Court is interested in buying some properties to be sold by the County Collector in our November tax sale.

"Will you please give us your opinion on the Court buying property and the procedure in purchasing at the tax sale."

The General Assembly, regular session, in 1933 passed an Act known as Senate Bill No. 94, which is found in Laws of Missouri, 1933, pages 425 to 449, inclusive. Many changes were made in the tax laws of our State relating to the foreclosing of the State's lien for delinquent taxes. Previous to the enactment of Senate Bill 94, the suit was brought in the circuit court to foreclose the State's lien and the property sold by order of the court. Under Senate Bill 94 the county collector sells the property.

In State ex rel. Karbe et al. v. Bader, 78 S. W. (2d) 835, the Supreme Court of Missouri, en banc, said (p. 837):

"The method of foreclosing the state's lien for delinquent taxes, which for many years had been by suit in a court of competent jurisdiction in the county wherein the lands were situated, was

radically changed by Senate Bill No. 94. It expressly repealed numerous sections of the former statute and particularly Section 9952, authorizing such suits, and substituted a scheme for foreclosure by sale by the collector at the courthouse door on the first Monday in each year, upon published notice thereof, and without resort to judicial proceedings -- the general statutory plan prevailing prior to the year 1877."

Section 9952c, Laws of Missouri, 1933, page 431, provides in part as follows:

"On the day mentioned in the notice, the county collector shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed or belonging to each person assessed, shall be sold as will pay the taxes, interest charges thereon, or chargeable to such person in said county. The person offering at said sale to pay said sum for the least quantity of any tract shall be considered the purchaser of such quantity."

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

"Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the collector, * * * * *."

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

"After payment shall have been made the county collector shall give the purchaser

a certificate in writing, to be designated as a certificate of purchase, which shall carry a numerical number and which shall describe the land so purchased, each tract or lot separately stated, * * * * *."

You will note that said sections make it the plain duty of the county collector to sell lands upon which taxes are unpaid and delinquent, and the purchaser at said sale must immediately deliver the amount of money bid to the collector. After the collector receives the money he issues a certificate of purchase. Nowhere do we find in Senate Bill 94 that the county court is precluded from purchasing property for the use and benefit of the county at a tax sale. Neither do we find any provision that makes the county collector the agent of the county court in performance of his duties relating to the sale of land for unpaid and delinquent taxes.

Section 2078, R. S. Mo. 1929, relates to the county court and gives them power to purchase real or personal property for the use and benefit of the county. Said section provides in part as follows:

"The county court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase * * * * * any property, real or personal, for the use and benefit of the county."

We do not find any statute that provides that the county court may not purchase at a tax sale, the only limitation being that if property is purchased it must be for the use and benefit of the county. It might be argued that it would be against public policy to permit the county to purchase at a tax sale in view of the fact that by such purchase the land would thereafter be exempt from taxation.

Section 9954b, Laws of Missouri, 1933, page 435, provides that the purchaser shall pay subsequent taxes. However, we do not believe that said section could be construed to deny the right of the county to purchase at a tax sale solely because that section could not be complied with. Said section provides:

"Any purchaser at delinquent tax sale of any tract or lot of land * * * * who takes possession of any tract or lot of land within the redemption period shall be required to pay the taxes subsequently assessed on such tract or lot of land during the period of occupancy * * * *."

Thus, while the above section contemplates the paying of taxes, yet, if no taxes would be assessed, none would be due and owing. Please do not understand us to mean that if the owner of the tract of land reclaims it, as such has the right to do, that he would be relieved from paying taxes on said tract solely because the county court was the purchaser of the tax certificate. Said question is not before us, and we do not by this opinion in anywise hold that the county court having bid in the land relieves the owner of subsequent taxes if such is redeemed by him. The serious question, as we view it, is -- Whether or not the county court by purchasing at a sale by the collector is against public policy.

The Supreme Court of Missouri in *Walcott v. Hand*, 122 Mo. 621, held that the collector who purchased land sold for taxes under a judgment of the circuit court and execution issued thereon to the sheriff, was not void as being against public policy. The court, page 628, stated:

"Counsel correctly assumes that a public officer charged with the duty of selling property for the best price cannot himself become the purchaser, and that a sale made by an agent or trustee to himself will not be sustained by the courts. These statutory and fundamental principles are not controverted by counsel for defendant, but he insists that both reason and the authorities distinguish between a sale by a tax collector to himself, and a sale to him by a sheriff made under a judgment and execution of the circuit court; that, after the execution came to the hands of the sheriff, the sheriff, and not the collector, was charged with its execution and responsibility attending the sale.

* * * * *

(p. 629)

"The sheriff, and not the collector, is charged by law with the execution of the process. He advertises and conducts the sale, and the collector has no control of the process, other than to stop the sale, if the owner shall pay the taxes and costs.

* * * * *

(p. 630)

"The collector of taxes cannot stand in a closer trust relation than an administrator, and if the law does not forbid the purchase by an administrator when a sheriff sells under judgment and execution, no good reason can be given why it should forbid the collector the same privilege, in the absence of fraud, conspiracy or collusion.

"Our conclusion is that the mere fact that the collector bought the land at the sheriff's sale will not render his deed void, and the court committed no error in so holding."

The above case was affirmed and followed in *Turner v. Gregory*, 151 Mo. 100, wherein the court said (p. 106):

"As to the other contention that the sheriff's deed to Oscar Reeder was void because Reeder was the collector who brought the suit, we have ruled otherwise in *Walcott v. Hand*, 122 Mo. 621, to which we still adhere."

In *Walker v. Mills*, 210 Mo. 684, the court held that an attorney for a county collector had a right to purchase land at a sheriff's sale if no fraud or collusion was raised by the pleadings. The court said, at page 689, the following:

"It appeared from the evidence that the plaintiff was attorney for the collector

at the time the tax proceeding was begun, but was not really tax attorney for the collector in office at the time of the sale. He had however looked after all the cases brought by him while acting for the collector who appointed him and this case with the others. Defendant contends that the attorney for the collector has no right to purchase at a tax sale. There are many respectable and forceful cases holding that a public officer whose duty it is to collect taxes cannot purchase at such sale. Such, however, is not the rule in Missouri. (Walcott v. Hand, 122 Mo. 621; Turner v. Gregory, 151 Mo. 1. c. 106.)"

From the above and foregoing it is our opinion that the county court would have the power and authority to purchase tax certificates on land offered for sale by the collector in order to satisfy the State lien on unpaid and delinquent taxes if the county court desires to use such means of acquiring property for use and benefit of the county. It is our further opinion that such purchase by the county would be valid just so long as there was an absence of fraud, conspiracy or collusion.

In answer to your question as to the procedure the county would pursue in making the purchase, we are of the conclusion that the same procedure would prevail as in the case of the purchase of land. The county court is a court of record (Section 1826, R. S. Mo. 1929) and, of course, speaks through its record. We believe that the county court, if it desires to use the means of acquiring property by purchasing certificates at the collector's sale, should by record so state the fact and then appoint an agent in order to carry out its wishes. Of course, the county court would have to have available money with which to purchase said certificates and would have to follow the provisions of the County Budget Act (Laws of Missouri, 1933, page 340, Section 2) in obtaining from proper

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class the amount of money necessary, which would be either
Class 5 or Class 6.

Yours very truly,

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Assistant Attorney-General

APPROVED:

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

JLH:EG