

DRAINAGE DISTRICTS: (1) Lien for drainage district taxes does not become
TAXATION:) extinguished until deed is delivered; (2) Purchaser
of land conveyed under Sec. 9957a, Laws of Mo. 1933, p.
438, does not acquire title free from future levy of
drainage district taxes because of unused and unlevied
benefits; (3) Drainage district may redeem land sold for
delinquent state or county taxes to protect their interest
Sec. 10766, R. S. 1929
September 3, 1936.

10-6

FILED
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Honorable Nat B. Rieger
Prosecuting Attorney
Adair County
Kirksville, Missouri

Dear Mr. Rieger:

This is to acknowledge your letter dated September
1, 1936, as follows:

"Will you please give me the opinion of
your department on questions set out
below?

"Land is to be sold by the County
Collector for delinquent state and
county taxes under the authority of
Sections 9952 to 9963 (page 430 to 450,
Laws of Missouri, 1933). The land
lies in a drainage district organized
under Article 1, Chapter 64, R. S.
Missouri, 1929. It was assessed with
benefits of \$40.00 per acre to pay for
the improvements and there are now delin-
quent district drainage taxes for a
portion of those assessed benefits and
there remains some of those assessed
benefits for which installments of drain-
age taxes have not been yet levied.

"(1.) Will the purchaser at the sale, in
the event that the district does not re-
deem the land, acquire a title free from
any lien on account of the delinquent
district drainage taxes?

"(2.) Will the purchaser at the sale, in the event that the district does not redeem the land, acquire a title free from any future levy of drainage district taxes on account of the unused and unlevied benefits?"

(3.) Does the drainage district have such an interest in the land as to authorize it to redeem under such law?"

I.

Will the purchaser at the sale, in the event that the district does not redeem the land, acquire a title free from any lien on account of the delinquent district drainage taxes?

As stated in your letter we are concerned only with drainage districts organized by the circuit court by virtue of Article 1, Chapter 64, R. S. Mo. 1929.

Prior to the enactment of Senate Bill No. 94 (Laws of Missouri, 1933, pages 425 to 449) the State's lien for delinquent and back taxes was foreclosed by a suit in the circuit court. However, with the enactment of Senate Bill 94 a radical change was made and "It expressly repealed numerous sections of the former statute and particularly Section 9952, authorizing such suits, and substituting a scheme for foreclosure by sale by the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." State ex rel.v.Bader, 78 S. W. (2d) 835, 837.

Section 9952a of Senate Bill 94 provides in part as follows:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of

"November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale; * * * *"

A reading of the above section shows that it is not now necessary when the State's lien is foreclosed to apprise the owner or any person having a lien or interest in said land. This is radically different from the suit previously brought in the circuit court which extinguished any and all liens if such were parties to the suit. Little River Drainage District v. Sheppard, 7 S. W. (2d) 1013. The delinquent land list is published. Section 9952b. When the land is offered for sale the first time and no bid is received which is sufficient in order to pay the tax, costs and expenses, then the land is reoffered for sale a second time, and failure to receive the proper amount of tax, costs and expenses the second time, the land is offered the third time, at which time it is struck off to the highest bidder. Sections 9953 and 9953a.

When land is sold for delinquent and unpaid taxes the county collector gives to the highest bidder a certificate of purchase. Section 9953d. The purchaser of said certificate may get possession of the premises one year after date of sale, by virtue of Section 9954a, and at the expiration of two years if the property has not been redeemed it is conveyed to the holder of the certificate of purchase by the county collector by a form of conveyance which is "prima facie evidence of a good and valid title in fee simple." Section 9957a.

Section 9956a provides in part as follows:

"The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: * * * *"

By Senate Bill 94 we thus have a complete scheme for the foreclosing of the State's lien, and specifically gives the right of redemption to any owner or person having an interest therein in said land to redeem same within two years. After a lapse of two years, upon application of the holder of a certificate of purchase, a title in fee simple is given by the county collector.

While you ask the question as to the extinguishing of the lien for delinquent drainage district taxes by virtue of the sale of such land by the county collector, yet, your question is divisible into two parts: (1) Is the lien extinguished at the time the certificate of purchase is issued, or (2) is the lien extinguished at the time the county collector gives a deed two years after the certificate of purchase?

It is our opinion that the liens for drainage district taxes do not become extinguished at the time the certificate of purchase is delivered because of the provision for redemption. Section 9956a. It is our further opinion that when the deed is delivered by virtue of Section 9957a, then drainage district liens for taxes become extinguished and satisfied insofar as such liens apply to the period prior to the issuing of the certificate of purchase.

As Senate Bill 94 was enacted in 1933 we have been unable to find any case that has been adjudicated by the court which is determinative of the question and supporting our conclusion. However, prior to the enactment of Senate Bill 94 many cases were decided by the court on the question involved. In *Little River Drainage District v. Sheppard*, 7 S. W. (2d) 1013, the court said (p. 1014):

"The lien for state and county tax shall be paramount. The statute does not say that it shall necessarily destroy the district lien for special taxes. The plaintiff district, according to the stipulation and finding of the trial court, was not made a party to this proceeding. No person or corporation can be affected by a proceeding to which he or it was not made a party, and that applies to tax suits. For instance, the state's lien for taxes is superior to a prior mortgage

"lien, and a sale under such tax lien conveys title to the purchaser but does not affect the mortgagee's right to redeem."

In said suit the court held that because the drainage district was not made a party to the tax suit that said suit would not have the effect of extinguishing or satisfying the drainage district's lien. However, the court made this pointed observation (p. 1014):

"If the district had been made a party to the proceeding with an opportunity to meet and pay the general taxes at the time, a different question would be presented for consideration."

Also, in *McAnally v. Little River Drainage Dist. et al.*, 28 S. W. (2d) 650, the Supreme Court of Missouri, en banc, made this remark:

"Since the ruling in *Little River Drainage District v. Sheppard*, 320 Mo. 341, 7 S. W. (2d) 1013, respondents concede they lost their lien for delinquent annual installments levied prior to the levy and subsequent sale of the land in question for state and county taxes for the year 1926."

If prior to the enactment of Senate Bill 94 the Drainage District liens (being subordinate to the state liens) became satisfied and extinguished by a suit in the circuit court when the district was named a party to the suit, and it being unnecessary under Section 9952a to name the owner, mortgagee or any person having an interest in said land when such was advertised for sale, two years hence, with the giving of a deed which conveys a fee simple title, the drainage district's lien would be extinguished the same as in the instance when the state's lien previously was foreclosed by suit and the district made a party to same. However, if there is any fraud, collusion or connivance on the part of the owner of said land to permit it to be sold under the state's lien and then bid it in for the purpose of satisfying the drainage district's liens, then the whole procedure would be subject to attack and the drainage district could still enforce its lien.

II.

Will the purchaser at the sale, in the event that the district does not redeem the land, acquire a title free from any future levy of drainage district taxes on account of the unused and unlevied benefits?

We believe that the case of *McAnally v. Little River Drainage Dist. et al.*, 28 S. W. (2d) 650, answers the above question. The court stated (p. 651):

"Respondents state the question for determination as follows: 'The sole question then presented is whether or not the sale of the land in question for state and county taxes destroys the lien of the districts for unlevied subsequent (future) installments of the estimated total tax.'"

The court held (p. 652):

"But the lien does not accrue until an annual levy is made. It follows that at the time appellant purchased the land, the owner held title free of, but subject to, the lien of future installments of the estimated total tax. Therefore the sheriff's deed conveyed the land subject to the future attachment of said liens."

Nothing is found in Senate Bill 94 that provides that future drainage district liens become satisfied when property is conveyed by the county collector by deed. Section 9957 does provide, however, in part as follows:

"If no person shall redeem lands sold for taxes within two years from the sale * * * the collector of the county * * * shall execute * * * a conveyance * * * which shall vest in the grantee an absolute estate in fee simple, subject however to all claims thereon for unpaid taxes

except such unpaid taxes existing at the time of the purchase of said lands and the lien for which taxes were inferior to the lien for taxes for which said tract of land was sold."

Thus, while delinquent drainage district taxes would be extinguished by virtue of the conveyance, yet future assessments are not affected.

It is our opinion that the purchaser of land conveyed, by virtue of Section 9957a, does not "acquire a title free from any future levy of drainage district taxes on account of unused and unlevied benefits."

III.

Does the drainage district have such an interest in the land as to authorize it to redeem under such law?

As Section 9956a specifically provides that any person having an interest in the land may redeem same, it is our opinion that the drainage district has such an interest that it could protect same by redeeming the property from the holder of the certificate of purchase, by virtue of Section 10766, R. S. Mo. 1929. Section 10766 specifically gives the board of supervisors the right to protect its liens when the property is offered for sale because of delinquent state or county taxes. See, also, Dyer et al. v. Harper et al., 77 S. W. (2d) 106.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

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

JLH:EG