

TAXATION: Right of possession and rent to redemption period.

March 10, 1936. 3-11



Hon. H. Glenn Weber
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Mr. Weber:

Your communication of recent date is acknowledged wherein you request an opinion on the following matter:

"Considerable question has arisen on the rent problem in connection with sale of delinquent property under section 9954a of the 1933 Act.

When, if ever, in your opinion must the owner of a homestead begin to pay rent to a purchaser at a tax sale under the above mentioned section?

And, when must the owner of a tract, not a homestead, begin to pay rent on the tract to the purchaser at a tax sale?

The section mentioned seems somewhat ambiguous, especially in the event of a sale of a homestead, and your early opinion on the rent question will be greatly appreciated."

Section 9954a, page 434, Laws of Missouri 1933, provides in part as follows:

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"The purchaser of any tract or lot of land at sale for delinquent taxes, homesteads excepted, shall at any time after one year from the date of sale be entitled to the immediate possession of the premises so purchased during the redemption period provided for in this act, unless sooner redeemed; provided however, any owner or occupant of any tract or lot of land purchased may retain possession of said premises by making a written assignment of, or agreement to pay, rent certain or estimated to accrue during such redemption period or so much thereof as shall be sufficient to discharge the bid of the purchaser with interest thereon as provided in the certificate of purchase.* * * *"

By the specific provisions of the first two lines of the above section it will be noted that homesteads are "excepted" from the provisions of that part of the section. This can mean but one thing, to-wit, that if the certificate of purchase covers a homestead the holder is not entitled to possession during the redemption period and consequently the owner of the land is required to pay no rent during the redemption period. So much for the law as it applies to homesteads.

In the event a certificate of purchase covers land which is not the homestead of the taxpayer the provisions of Section 9954a heretofore referred to are applicable, to-wit, after one year from the date of the sale the holder of the certificate may demand and obtain possession of the land covered by the certificate. If the holder of the certificate of purchase demands possession of the premises at any time after one year from the date of the sale the owner of the land may then enter into an agreement with the holder of the certificate of purchase to pay said holder the estimated rent to accrue or may make an assignment of the rent which is to accrue during the balance of the redemption period and thus keep possession of the land. Of course, if the holder of the certificate of purchase

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does not demand possession of the property there is no obligation upon the owner to make any agreement to pay rent or to make an assignment of the rent. In this connection I desire to call attention to the provisions of the next to the last sentence of said section 9954a which provides as follows:

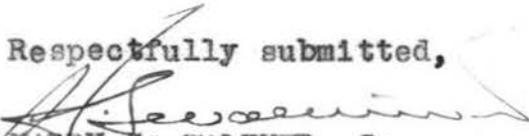
"Any rent collected by the purchaser, his heirs or assigns, shall operate as a payment upon the amount due the holder of such certificate of purchase, and such amount or amounts, together with the date paid and by whom shall be endorsed as a credit upon said certificate, and which said sums shall be taken into consideration in the redemption of such land, as provided for in this act."

Any rent received during the redemption period must therefore be credited upon the certificate of purchase.

CONCLUSION.

From the foregoing it is the opinion of this office that if the land covered by the certificate of purchase is a homestead the holder of the certificate is not entitled to possession of the land during the redemption period and consequently there is no obligation upon the owner to pay rent during such period, but if the land covered by the certificate is not a homestead the holder is entitled to possession thereof after one year from the date of sale, and after demand for possession the owner may defeat such possession by entering into an agreement to pay or an assignment of the rent estimated to accrue or to be due during such redemption period, in which later event the amount of rent received must be applied as a credit upon the certificate of purchase.

Respectfully submitted,


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Assistant Attorney General

APPROVED:

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