

TAXATION & REVENUE: Procedure of collector at second and third offering for sale. Collector of City of St. Louis may not subdivide state, city and school tax and enforce them independently

August 31, 1937.

State Tax Commission,
Jefferson City, Missouri.

Attention: Mr. Evans, Chairman.

Dear Sir:

We acknowledge receipt of your letter of August 5th to General McKittrick requesting an opinion of this office relative to the sale of real estate under the Jones-Munger Law, known as Senate Bill #94. We are answering all of these inquiries in this opinion.

The inquiries are set out in a letter addressed to you from Mr. John G. Burkhardt, Tax Attorney of the City of St. Louis, which letter is as follows:

"Upon behalf of the City of St. Louis and Mr. Wm. F. Baumann, Collector of the City of St. Louis, and pursuant to Section 9960 d, Revised Statutes of Missouri, 1929, as adopted by the laws of Missouri 1933, page 443, we are requesting a ruling of the State Tax Commission and the Attorney General upon the following questions:

1. At the third offering of lands for delinquent taxes under the Jones-Munger law, does the bid of a purchaser in an amount insufficient to pay the taxes extinguish the balance of said taxes? As an example, if a purchaser at a tax sale this November should bid \$5.00 for 1930 taxes which amount to \$100.00 and which are being offered for sale for the third time, does this bid constitute satisfactory payment in full of said taxes? In other words, does the owner or the interested party redeeming said land have to pay merely the \$5.00 to the purchaser to redeem or must he (the interested party) likewise pay the balance of the \$95.00 to the Tax Collector before he is entitled to redeem his lands?



2. What is meant by the use of the words "then delinquent taxes," in Sec. 9953 of the laws of Missouri for 1933, p. 432? Must the Collector accept any bid, when the property is being offered for the third time, and consider said bid as being in full for all the taxes advertised at that sale? Or must the bid be considered in full for all taxes then delinquent on the property, whether advertised or not? Or does the bid only foreclose the lien for the one year's taxes which are being called for the third time? In either of the first two contingencies above stated, must the bid be sufficient to cover in full the taxes for the year or years other than those which are being advertised for the third time?

3. The Collector of the City of St. Louis collects State, City and Board of Education taxes. Can the Collector or other proper authority of the City of St. Louis sub-divide the tax bills into three separate bills, one for each said unit respectively and then offer the lands for sale for the taxes due the City of St. Louis alone?"

I.

BID AT THIRD SALE EXTINGUISHES TAX LIEN IF NO REDEMPTION EXERCISED.

Section 9953a, page 432, Session Acts of Mo. for 1933 provides:

"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."

The last phrase of this section states that the purchaser at the third offering of a tract or lot for delinquent tax acquires the same rights as any other purchaser, which means that in the event no redemption is effected within two years of the sale, the purchaser is entitled to a deed from the Collector vesting 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 or lot of land was sold." (Section 9957, page 438, Session Acts of Missouri 1933). *See*

The purchaser at the third sale thereupon obtains the right to a fee simple title, discharged of the lien for delinquent taxes existing at the time of sale, conditional, upon the failure of the owner or an interested person to redeem. However, such right is a conditional one and is eliminated by the purchaser or any other person having a right to redeem, exercising that privilege and redeeming the tract from the sale.

CONCLUSION

It is, therefore, the opinion of this office that at the third sale, the bid of the purchaser, even though insufficient to pay the taxes, penalties, interests and costs gives the purchaser the conditional right to a deed which, when obtained, extinguishes the balance of said taxes.

II.

THE PERSON REDEEMING IS ONLY REQUIRED TO PAY AMOUNT OF BID WITH INTERESTS PLUS SUBSEQUENT TAXES PAID PLUS COSTS.

Section 9953a herein before set out plainly states, that lands sold at the third offering for what they may bring are subject to redemption under the same terms as though sold at the first or second offering.

Section 9956a, page 437, Session Acts of Mo. for 1933, provides, that lands may be redeemed:

"By paying the County Collector for the use of the purchaser * * * the full sum of the purchase money named in the certificate of purchase and all the costs of sale together with interests at the rate specified in such certificate not to exceed 10 per centum annually with all subsequent taxes which have been paid thereon by the purchaser * * * with interest * * * of eight per centum per annum and such taxes subsequently paid, and in addition thereto the person redeeming shall pay the costs incident to entry of recital of such redemption."

Therefore, any person entitled to redeem, need only to pay the amount of the certificate of redemption, plus the items above referred to. No further nor additional payments may be required. However, we direct your attention to the provisions of Section 9953b, supra, which authorizes and directs, that:

"In the event of the redemption of any land from any sale made under the provisions of this act, the land so redeemed shall be liable to resale by such county collector at the next or any subsequent tax sale of lands for all delinquent taxes, penalties, interest and costs not paid by such sale."

In the event of a redemption for less than the full amount of taxes, penalties, interest and costs existing against a given tract or lot of land, the collector is charged with the duties of advertising and selling the tract or lot for the balance of the taxes, penalties, interest and costs which were not paid by the prior sale.

CONCLUSION

It is, therefore, the opinion of this office that the person redeeming tracts or lots of land pays merely the amount of the bid made by the purchaser as shown on the certificate of purchase, together with the costs of sale, with interest on the whole at the rate specified in the certificate plus any subsequent taxes paid by the purchaser with interest at the rate of 8% per annum thereon and the costs incidental to such redemption, but that, if such bid did not pay the taxes, penalties, interest and costs existing at the time of

sale, the collector is required to resell the tract at the next sale for the balance of such taxes, etc. as were not paid at the prior sale.

III.

CONSTRUCTION OF PHRASE "THEN DELINQUENT TAXES."

Your inquiry refers to the phrase "then delinquent taxes" as used in Section 9953, page 432, Session Acts of Mo. 1933. This section requires that in the event no bid is received at the first sale of a given tract to pay the taxes, penalties, interests and costs thereon, the tract shall be again advertised or offered for sale at the next subsequent sale for "the then delinquent taxes, penalties, interests and costs." When lands are reoffered for sale under Senate Bill No. 94, it is in a subsequent year to a former offering and therefore additional penalties, interests and costs have accrued on the former years taxes and, an additional year's taxes has become delinquent and penalties, interests and costs have accrued thereon. The term "then delinquent taxes" refers to the total taxes delinquent at the time of the reoffering and the term "then delinquent taxes thereon with interests, penalties and costs" as used in Section 9953, supra, means the total of all delinquent taxes, penalties, interests and costs due at the time of the reoffering.

CONCLUSION

It is, therefore, the opinion of this office that on a reoffering of a tract or lot of land under Section 9953 or 9953a, page 432, Session Acts of Mo. for 1933, such reoffering should be for all delinquent taxes, penalties, interests and costs which exists at the time of the reoffering.

IV.

THE COLLECTOR MUST ACCEPT THE BEST BID AT THE THIRD OFFERING IN PAYMENT OF ALL TAXES, ETC. THEN DELINQUENT AND ADVERTISED.

Under provisions of Section 9953a, supra, the collector is directed, in the event he has failed to receive for two successive prior years a bid "equal to the delinquent taxes thereon, interests, penalties and costs", he shall sell at the next regular sale "to the highest bidder".

The best bid is the one that must be obtained and that bid, although not equal "to the delinquent taxes thereon, interests, penalties and costs", when paid, is warrant for the issuance of the Certificate of Purchase.

You inquire if that bid is in full for all taxes "then delinquent" whether advertised or not.

Compliance with said Senate Bill No. 94, eliminates this issue. This law contemplates and requires that all taxes then delinquent on a given tract be included in the advertisement. Section 9952, page 429 of the 1933 Session Acts of Mo. requires the county collector to compile the lists of delinquent lands and lots describing them and,

"charging them with the amount of delinquent tax and name the years delinquent, separately states * * *."

Section 9952b, page 403, 1935 Session Acts of Mo. provides for the publication of the list of delinquent lands and lots and states:

"And it shall only be necessary in the printed and published lists to state in the aggregate the amount of taxes, penalties, interests and costs due thereon, each year separately stated" * * *

and further that a notice shall be attached to such lists stating:

"That so much of said lands and lots as may be necessary to discharge the taxes, interests and charges which may be due thereon at the time of sale will be sold at public auction * * *".

Section 9952c, page 431 of the 1933 Session Acts of Mo. provides that the collector shall at the time and place mentioned proceed to hold the sale as published until so much of each tract "shall be sold as will pay the taxes, interests and charges thereon * * *."

These Sections and many others which are a part of Senate Bill No. 94 clearly show that the advertisement and the sale contemplated and required is and must be for all the taxes, penalties, interests and costs existing and delinquent against the tract. If further proof is required we call attention to Section 9953 and 9953a, supra, as quoted under part one of this opinion.

Under Section 9953, supra, the county collector is forbidden to make any sale of any tract or lot at the first offering unless he shall receive a bid heretofore "equal to the delinquent taxes thereon with interests, penalties and costs * * *."

Nor may the collector sell at the second offering, unless a person,

"shall bid, therefor, a sum equal to the then delinquent tax thereon with interest, penalty and cost * * *."

Under Section 9953a, provision is made for a third offering for what the property will bring provided that at the two prior sales,

"no person shall have bid therefor, a sum equal to the delinquent taxes thereon, interests, penalties and costs * * *."

Under these sections, no sale may be had at the first or second offering, unless a bid is received equal to the taxes, penalties, interests and costs existing at the time of the sale. The collector is without authority to issue a certificate for any bid less than the amount of the taxes, interests, penalties and costs at the first or second offering.

Therefore, he could not offer a given tract for less than the amount of the taxes, penalties, interests and costs existing at the time of the sale.

The answer to your inquiry is that the bid made at the third offering is to be considered in full for all taxes then delinquent which must be included in the publication of the list of delinquent lands and lots.

Accordingly the bid made does not foreclose the lien for the first years taxes which are being called for the third time for, as heretofore stated, the bid is for all taxes, penalties, interests and costs existing against the tract at the time of sale.

Accordingly the bid need not be sufficient to cover any given years taxes in full, as the tract, when offered the third time is offered for all taxes, penalties, interests and costs existing and delinquent at the time of the third offering.

CONCLUSION

It is, therefore, the opinion of this department that when the given tract is included in the publication of a notice of sale that the same shall describe the tract and state the amount of all the taxes, penalties, interest and costs due and delinquent at the time of sale each year separately stated and that in the event no bid is received equaling the sum of such items, no sale may be had at the first offer, but at the next sale the tract shall

be again advertised stating the amount of taxes, penalties, interests and costs due and delinquent thereon at the time of the second offering each year separately stated and if no bid is received at such second offering equal to the delinquent taxes with penalties, interests and costs then due and delinquent thereon, that the same land may not be sold at the second offering, but that the next publication and sale, the given tract shall be advertised stating all the taxes, penalties, interests and costs due and delinquent at the time of the third offering each year separately stated and at which sale the highest bidder will be entitled to a certificate of purchase irrespective of the sum due and delinquent against the tract.

V.

THE ENFORCEMENT OF CITY AND SCHOOL TAXES OF THE CITY OF ST. LOUIS - MAY BE ENFORCED IN LIKE MANNER AS MAY BE PROVIDED BY LAW IN ENFORCING THE PAYMENT OF STATE TAXES AND MAY NOT BE SUBDIVIDED INTO THREE SEPARATE BILLS.

Under Article one, Section one, of the Charter of the City of St. Louis, it is provided that said City shall have power to "assess, levy and collect taxes for all general special purposes on all subjects or objects of taxation."

It is provided in the assessment division of said City in Article 15, Section 4, that "the assessment division shall consist of the assessor and such deputy assessors and employees as may be provided by ordinance." It is their duty, under Section 8 of said Article "to commence their assessment on the first day of June of each year and complete the same, and the deputies to make their final reports thereof to the assessor on or before the first day of January next following".

The assessor shall make up the assessment books and complete them on or before the third Monday of March each year. Section 9 of Article 15:

"There shall be a board of equalization consisting of the assessor who shall be its president and four tax-paying * * * citizens* * * and, each member shall take an oath similar to that required by law of the members of the county boards of equalization." Section 10 of Article 15.

Under Section 11, Article 15, of said Charter, the powers of said board are set out, which said powers are similar to that of county courts.

When the assessment books are completed, the assessor is required to give notice that said books are open for inspection and stating therein when the board will meet, and thereupon the board meets, proceeds with its duties and, after the assessment books have been corrected, the assessor must make an abstract thereof as provided in Section 15, Article 15, Charter of St. Louis at page 1316 which is as follows:

"After the assessment books have been corrected, the assessor shall make an abstract thereof showing the amount of the several kinds of property assessed and specifying the amount of value of all taxable property within the city, and certify thereon that the same is a true and correct abstract of all such property in the city so far as he has been able to ascertain. One copy of the abstract, verified by his oath, shall be delivered on or before the fourth Monday in May to the mayor, and another to the state auditor. The assessor shall extend in said assessment books the state, school, and city taxes and include in said books such matter as the law shall provide or the comptroller require. The assessor shall then cause tax bills to be made out for such taxes in such forms as the law shall provide or the comptroller prescribe, and deliver them with a duplicate schedule thereof to the comptroller, who shall compare said bills with said books and schedule and test the footings, and then officially stamp said bills and deliver them with one schedule to the collector, and take his separate receipts; one for the aggregate of said bills, and another for the state taxes, which last receipt the comptroller shall transmit to the state auditor."

The collection division shall consist of the collector and such deputies and employees as may be provided by ordinance.

The duties of the collector are set out in Section 20, Article 15 of said Charter which is as follows:

"The collector shall have the qualifications provided with regard to the mayor and be the head of the collection division. He shall receive such compensation as may be provided by law or ordinance. He shall collect all state, city, and school taxes, wharfage, water rates, and dramshop licenses, and may collect special assessments, and, unless otherwise provided by ordinance, all indebtedness and claims due the city, and daily pay the same to the city treasurer, except the state taxes, which shall be paid by him as provided by law, and except the school taxes, which shall be paid by him to the board of education of the city monthly, or oftener when required in writing by the treasurer of said board. He shall collect license taxes as permitted by law. He shall appoint the deputies and employes in his division. Each deputy shall have all the powers of the collector, subject to his control."

Said collector, before entering upon the duties of this office, "shall give bond to the State as required by law and to the City as may be required by ordinance". Section 21 of Article 15.

Section 22, Article 15, provides for the enforcement of tax payment and is as follows:

"The payment of all city and school taxes may be enforced in like manner as may be provided by law for enforcing the payment of state taxes."

In considering the above questions the Supreme Court in the case of State ex. rel v. Gardner, 234, S. W. 53, stated:

"Section one, Article 9, of the Constitution of Mo. provides that "the several counties of this state, as they now exist, are recognized as legal subdivision of the State". St. Louis City is a legal subdivision of Missouri and as such has been and should be treated for all governmental purposes as a county, Gracey v. St. Louis, 213 Mo. 384, State ex. rel v. Finn, 4 Mo. App. 347.

In the last cited case, the court said regarding the City of St. Louis:

"it may be a county so far as to keep up the relation as such to the rights of the State".

In the case of State ex. rel Halpin v. Powers, 68 Mo. 1. c. 323, the court, in commenting on the same subject, said:

"The 20th section of article 9 of the constitution, which provided for the separation of the city from the county, authorized the people of the city to adopt a charter for their government which should be in harmony with and subject to the constitution and laws of Missouri, and should take the place of and supersede the charter of St. Louis and all amendments thereof. The 23rd section of the same article provides that the city of St. Louis shall collect the State revenue in the same manner as if it were a county. As the city government, authorized by the constitution for the city of St. Louis, is entirely different in its organization from that of the counties, and as the duty of collecting the State revenue which devolved upon the county of St. Louis under the general law, was thereafter to be performed by the city of St. Louis, it became necessary to provide in the charter the requisite municipal agencies for the performance of that duty. Proper officers were to be designated, the mode of their selection prescribed, and the duties which were previously performed by the officials designated in the general law were, by express enactment, to be imposed upon them. The 1st section in the city charter on this subject declares that the city of St. Louis shall be assessed in accordance with the general law. Subsequent provisions require the annual assessment of real property within the city, and create a city board of equalization, which is required to meet annually, and is authorized to adjust, correct and equalize the valuation of real property so assessed, and to determine, as far as possible whether such property has been assessed

at its true cash value, and in just proportion to the assessed value of other property in the city similarly situated, and to increase or diminish the assessment accordingly. These requirements are substantially the same as those of the general revenue law relating to St. Louis county, in force at the time of the adoption of the scheme and charter,"

The question of a levy and collection of the school taxes within the City of St. Louis was passed on by the court in State ex. rel v. Casey, 94 Mo. l. c. 221, wherein it said:

"it is also to be remembered that the relator (School Corp. within the City of St. Louis) received a due portion of the general state revenue, set apart for the support of schools. It has, like the school districts throughout the counties, power to levy a local tax for the same purpose. In short, thought created by a special act of the legislature, it is designed to assist in carrying out the general common-school system, adopted by the state.*** This corporation is not subject to the control of the city government, but independent of it; save that it is the duty of the city officers to extend, collect, and turn over all school taxes levied by the board * * *."

The City of St. Louis having adopted its present scheme and charter, the constitution, (Section 23, Article 9), declares that the city shall collect the State Revenue and perform all other function in relation to the State, in the same manner as if it were a county. The suits for State, County and School Tax under Chapter 59 of 1929 Statutes were to be brought in the name of the State of Missouri for the use of the collector of the City of St. Louis. Such suits were based on tax bills, each bill including the taxes due for State, City and School. Under Senate Bill No. 94 said taxes are to be collected, by the collector, without suit, and no provision is made therein to divide or split the cause of action by bringing independent actions for State, City or School taxes.

St. Louis as a public corporation and agency of the State has authority to raise and collect money by taxes under the delegated authority of the legislature, and the money thus raised, under the control of

the State, is to be disposed of as the legislature may direct. State ex. rel St. Louis Police Commissioners v. St. Louis County Court, 34 Mo. 1. c. 552.

The school district or districts in St. Louis have not been given the power by the legislature to collect school taxes by suit, neither has the City of St. Louis been given the power, by the legislature, to bring separate suits for the taxes of City, School and State.

The legislature in Senate Bill No. 94 has determined the manner of the collection of all such taxes and the same cannot be collected except in the manner prescribed by law. Morton v. Reeds, 6 Mo. 64; Loring v. Groomer, 142 Mo. 1; Holly v. Rowling, 87 S. W. 1. c. 655.

CONCLUSION

It is, therefore, the opinion of this department that the City of St. Louis, as to the enforcement of state, city and school taxes, must act through its collector, and as such collector he is an official for the State, the City and the School District. He is an official in whom the interlinked interest of State, City and School District repose and on whom they collectively depend to obtain their independent revenue under the procedure of Senate Bill No. 94; and in view of the above statutes and decisions, the collector of the City of St. Louis, "may not subdivide the tax bills into three separate bills for each said unit and then offer the lands for sale for the taxes due the city alone".

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

SVM:LB