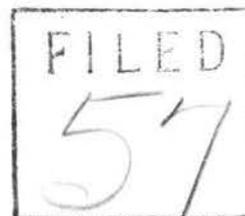


TAXATION:
SALE FOR TAXES:
COLLECTOR AND DEPUTY:
RIGHT TO PURCHASE: Collector or his deputy prohibited
from purchasing land sold for
delinquent taxes

November 30, 1937

12-2

Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri



Dear Sir:

This office acknowledges yours of October 16, 1937, requesting an official opinion from this Department as to whether or not the county collector or his deputy are permitted to bid on and purchase the lands which the county collector sells for delinquent taxes, by virtue of the provisions of Section 9952-c of the Session Acts of Missouri, 1933, page 431.

By Section 9952 of the Session Acts of Missouri, 1933, page 429, the collector is required to record the delinquent tax list of lands and lots upon which the taxes are unpaid.

By Section 9952-a of said Act, page 430, it is provided that all lands and lots upon which the taxes are delinquent shall be recorded and shall be subject to sale for such taxes, penalty and interest. Said section further provides that;

"The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

Section 9952-c of the Act directs the collector to sell such lands as are delinquent and upon which a lien for delinquent taxes, penalty and interest exists, by virtue of the provisions of said sections 9952 and 9952-a of the Act.

Under the tax statutes which were in effect prior to what is known as the Jones-Munger Act, Missouri Session Acts, 1933, at page 425, et seq., lands were not sold for delinquent taxes until a judgment had been rendered in the circuit court and the sale of the land for such taxes was made by the sheriff under an execution issued on such judgment. Sections 9953 and 9958, Revised Statutes Missouri 1929.

By the provisions of Section 1206, Revised Statutes of Missouri 1929, which are as follows,

"No officer to whom any execution shall be directed, or any of his deputies, or any person for them, shall purchase any goods or chattels, real estate or other effects, or bid at any sale made by virtue of such execution, and all purchases so made shall be void."

the officer, or his deputy, who is selling the land were prohibited from purchasing or bidding at any such sale, and the Act further provided that any such purchase was void.

The duties of the county collector as to the sale of lands for delinquent taxes under the Jones-Munger Act are similar to the duties of the sheriff under the old law.

In the case of Walcott, et al. v. Hand, 122 Mo. 621, the question of the right of the collector to purchase land sold for taxes was up, but this was a case in which the sheriff was selling under an execution issued upon a judgment rendered for delinquent taxes as provided in the old law.

In the case of Walcott, et al. v. Hand, supra, many cases were cited holding that the collector or his deputy had no authority to purchase lands sold by the collector for delinquent taxes. Among the cases cited in the case of Walcott v. Hand, supra, was the case of McLeod v. Burkhalter, et al. 57 Miss. 65, 66, in which the court said:

"There seems to be some difference in the authorities as to the right of a tax collector to purchase at his own sale land sold for taxes. We deem it to be the better opinion to deny such right. We see no reason why the ordinary rule, which condemns a sale when the purchaser is the person who makes the sale, should not apply to a sale made by a tax collector. The duty of a seller is inconsistent with the interest of a purchaser. As seller, it is the duty of the tax collector to get the highest possible price for the land he offers for sale; and, as a purchaser, it is his interest to secure it at the lowest price he can. When there is this conflict between duty and interest, the temptation is great to subordinate the former to the latter. It is the duty of a tax collector to give proper notice, and to collect the taxes, by a distress and sale of the personalty of the owner, before he proceeds to sell land for taxes; and when he makes a sale, it is his duty to realize the taxes by a sale of as little of the land as practicable. To allow him to

bid at the sale would place him under a temptation to violate these duties. Besides, persons charged with the administration of the fiscal affairs of the people must be content with the gains provided for in the fees and salaries allowed by law, and should not be permitted to augment them by speculations in the funds or property which come under their official control. The decree of the Chancellor is in accordance with these views, and is, therefore, affirmed."

The above case also cites Cooley on Taxation, Section 1447, which is as follows:

"In order that there may be free competition, it is essential that the officer who makes the sale should act as salesman only, and not become interested in the purchases. He cannot be allowed to occupy the inconsistent positions of purchaser and seller, in which his cupidity would draw him in one direction and his duty in another. The law cannot safely intrust the securities which are devised for the protection of private parties to the care of those who are interested to prevent their accomplishing the purpose for which they are provided. No provision of law, it is believed, would ever be made which would

allow official integrity to be subjected to the trial of such conflicts between interest and duty as would be sure to arise if the officer were allowed to bid at a sale where his duty would be to obtain the highest practicable bid in the interest of another, while his interest would be so to manage as to obtain the lowest. For the officer voluntarily to put himself in that position is regarded as a fraud on his part upon the law; and on grounds of general public policy, the sale which he makes to himself is void. On no other principle can integrity and good faith be secured in proceedings of this ex parte character."

The Missouri Supreme Court, in the case of Walcott v. Hand, supra, l. c. 628, in reference to the contention that the collector could not purchase at his own sales of land for delinquent taxes, said:

"Counsel correctly assumes that a public officer charged with the duty of selling property for the best price can not himself become the purchaser, and that a sale made by an agent or trustee to himself will not be sustained by the courts."

We find that the appellate court of the State of Washington, where it was the duty of the treasurer to sell land for delinquent taxes, said, in the case of Coughlin v. Holmes, et al. 102 Pac. 772, that

"A sale of land by the county treasurer to himself or a deputy in his office is invalid

as against public policy."

In the case of Payson v. Hall, 30 Maine, 319, 326, the court said:

"The collector is required to sell to the best bidder. A collector can not faithfully perform his duties who is both seller and purchaser."

In the case of Pendleton v. Letzkins, 114 S.E. 246, the West Virginia appellate court said:

"When county officers or their deputies having duties to perform in relation to the sale of delinquent lands for taxes become the purchasers of such lands at a delinquent sale, their conduct in relation thereto will be carefully scrutinized, particularly where their official duties conflict with their personal interest."

In the case of Shotwell v. Munroe, 42 Mo. App. 669, 678, the St. Louis Court of Appeals, in passing upon a Missouri statute, which is now Section 1206, Revised Statutes Missouri 1929, prohibiting an officer or a deputy from bidding or purchasing property at his own sales, said:

"These provisions are merely declaratory of the common law, resting on the soundest principles of public policy, which prohibit any trustee from becoming directly or indirectly interested in a

sale made by him."

In the case of Ownby v. Ely, 58 Mo. 475, the court said:

"Not that every such case would necessarily be fraudulent, but it would furnish an inducement and temptation, which the wisest policy is to utterly prohibit."

While there is no particular statute in this State prohibiting the county collector or his deputies from bidding or purchasing lands sold by the county collector for delinquent taxes, it seems that public policy and the provisions of Section 1206, Revised Statutes Missouri 1929, would prohibit such bidding and purchases by the collector or his deputies.

CONCLUSION

From the foregoing authorities and rulings of the courts, this office is of the opinion that the county collector or his deputies are not authorized to bid at sales or purchase lands offered for sale for delinquent taxes by the collector.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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