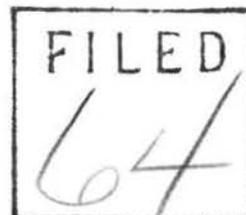


TAXATION: County collector not required to determine legal question of status of redemptioner.

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Hon. Morgan M. Moulder
Prosecuting Attorney
Camden County
Camdenton, Missouri

Dear Mr. Moulder:

We are in receipt of your communication of recent date requesting an opinion on the following matter:

"The collector of Camden County has requested that I ask your opinion as to whether or not he should permit any person to redeem real estate which has been sold for taxes.

The person who purchased the property at a tax sale, as provided for by sale of delinquent property, objects to the collector receiving payment from a person who desires to redeem the property, for the reason that the person offering to redeem has no interest in the property to entitle him to redeem the same.

The county collector takes the position that it is not his duty to investigate the title to the property which he has sold, to determine whether or not such person offering to redeem has sufficient interest therein, under the Statute, to redeem, and that he believes it his duty to accept the offer and redeem the property, and the purchaser at the sale of the delinquent property may bring a

suit to determine title on the ground that the person redeeming had no authority to do so."

Section 9956a, page 437, Laws of Missouri, 1933, sets out the manner in which property may be redeemed from sale under the law for the enforcement of delinquent state and county real estate taxes. This section provides that in any time during two years next ensuing the sale the owner or occupant of any land or any person interested therein may redeem the same

"by paying to the county collector for the use of the purchaser, his heirs or assigns the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to exceed ten per centum annually with all subsequent taxes which have been paid thereon by his heirs or assigns with interest at the rate of eight per centum per annum on such taxes subsequently paid and in addition thereto the person redeeming any land shall pay the cost incident to entry of the recital of such redemption. Upon the deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser his heirs or assigns at the last post office address, if known, and if not known then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption."

It therefore appears that the delivery of this money to the County Collector and the receipt thereof by him is but a ministerial duty imposed upon him. It is but the deposit of

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the money for the use and benefit of the holder of the certificate of purchase. The County Collector is but an escrow agent or statutory depository for the money necessary to redeem the certificate. The general rule is stated in 61 C. J. 1288, Section 1791, as follows:

"Money paid to the proper officer of a county or city for the redemption of land does not belong to the municipality or the officer even temporarily but to the holder of the tax certificate * * * * *

An examination of Section 9956a, supra, reveals that it does not appear that it was intended that the county collector perform the judicial act of determining who is an owner or occupant of the land or person having an interest therein. That question is essentially a judicial one and an examination of that section fails to disclose any intent on the part of the legislature to clothe the county collector with the duty or the authority to make this judicial determination. We have examined the cases on the subject and fail to find a case passing upon the duty or authority of the county collector to pass upon a legal question such as presented by your inquiry.

In the case of Mitsch vs. Riverside Township, 86 N. J. Law, 603, 92 Atl. 436, the question was raised but not decided by the Court. However, in the course of the opinion the court state, page 439 (Atl.):

"Even when it came to the redemption of the property from the sale, Mitsch was given no chance to redeem. Although Schele, the purchaser, served a notice calling upon him to redeem, the collector refused him the right solely on the ground that he was a stranger of the title, thus assuming to pass on a legal question and deciding it wrong."

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The inference to be gained from this statement it seems is that the County Collector in that case was assuming to pass upon a question which was not properly before him. The Court set aside the tax deed, but did not do so upon the ground that the collector had wrongly determined that the person attempting to redeem was a stranger to the title. Accordingly, the decision is not of great value in determining your problem.

After reviewing the provisions of our tax law, we believe that the proper interpretation of the county collector's duties require him to act but ministerially in accepting the money, and that if the holder of the certificate of purchase is of the opinion that the person attempting to redeem is not, under the law, entitled to redeem such holder may refuse to accept the sum so deposited and retain the certificate of purchase and then at an appropriate time and in a proper proceeding have the fact of redemption determined. The general statement found at 61 C. J. 1248, Section 1695, is applicable:

"If a stranger tenders the redemption money to the holder of the tax sale certificate the latter may refuse to receive it, or if the money is paid to the proper officer the tax purchaser may repudiate it and in neither case is the title of the latter divested, nor will the attempted redemption be effective to convey title either to the redemptioner or to those claiming under him, or inure to the benefit of the real owner; but if the tax purchaser consents to the redemption and accepts and retains the money, he will be estopped to deny the effect of the transaction as a redemption, and it seems that in such case the act of the stranger will inure to the benefit of the true owner of the land at least if he chooses to ratify it and claim the advantage of it."

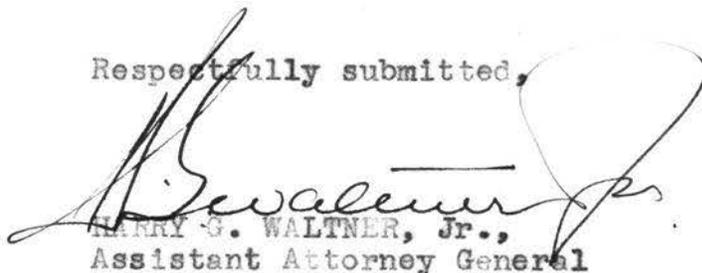
CONCLUSION

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It is, therefore, the opinion of this office that under the facts stated in your communication the county collector may properly accept the money from the person attempting to redeem the property and the holder of the certificate of purchase may, if he desires, refuse to accept from the county collector the money so deposited and at a proper time and in a proper proceeding have the issue of redemption judicially determined.

Respectfully submitted,



HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

HGW:MM