

TAXATION\*\*\*Initial Proceedings under Senate Bill 94 constitute first advertisement of sale.

June 5, 1937



Mr. Arthur C. Mueller  
Prosecuting Attorney  
Gasconade County  
Hermann, Missouri

Dear Mr. Mueller:

We are in receipt of your request for an opinion on the following matter:

"When do taxes on real estate due and payable on or before Dec. 31, 1931, become outlawed by the statute of limitation?

Does the fact that the tax certificates for the above taxes having been advertised and offered for sale in November 1936, and not sold for lack of bidders take said taxes out of the 5 year Statute of Limitation and in that case, could said 1931 taxes still be legally collected in spite of the fact that they are delinquent over five years."

On September 4, 1934, this office rendered an opinion to Honorable Charles M. Hay, then City Counsellor of the City of St. Louis, in which it was determined that Senate Bill 54 of the 1933-1934 Extra Session, found at page 154, Laws of Missouri Extra Session, 1933-1934, modified the Jones-Munger Law, page 425, Laws of Missouri 1933, and arrived at this conclusion:

"It is therefore the opinion of this office that the provisions of Senate Bill 94, passed by the 57th General Assembly in Regular Session have been modified by the passage of Senate Bill 54 of the 57th General Assembly in Extra Session, so as to permit initial proceedings to be instituted at any time within five years of the date of delinquency."

We herewith enclose to you a mimeographed copy of that opinion and direct your attention particularly to part two thereof. This opinion of course was based upon the enactment of Section 9961 by the 57th General Assembly in Extra Session, page 154, Laws of Missouri Extra Session, 1933-1934, reading as follows:

"No proceedings for the sale of land and lots for delinquent taxes under the provisions of Chapter 59, Revised Statutes of Missouri, 1929, relating to the collection of delinquent and back taxes and providing for foreclosure sale and redemption of land and lots therefor, shall be valid unless initial proceedings therefor shall be commenced within five (5) years after delinquency of such taxes, and any sale held pursuant to initial proceedings commenced within such period of five (5) years shall be deemed to have been in compliance with the provisions of said act in so far as the time at which such sales are to be had is specified therein, provided that proceedings for the sale of lands and lots on which taxes are delinquent for the year 1928 may be commenced at any time prior to December 31, 1934. Provided further, that in suits or actions to collect delinquent drainage and/or levee assessments on real estate such suits or actions shall be commenced within five years after delinquency, otherwise no suit or action therefor shall be commenced, had or maintained."

The pertinent part of that section is:

\*\*\*any sale held pursuant to initial proceedings commenced within such period of five (5) years shall be deemed to have been in compliance with the provisions of said act\* \* \*.

When we consider the history of this legislation, it is certain that "initial proceedings" as used in this section had specific relation to "initial proceedings" under Senate Bill 94, otherwise known as the Jones-Munger Law, as this section was enacted the session following the one at which the Jones-Munger Law was adopted and after this office had rendered an opinion that Section 9961 R. S. Missouri 1929, did not operate as a statute of limitations upon the procedure prescribed by Senate Bill 94.

We are next confronted with the problem of what constituted "initial proceedings" under the Jones-Munger law. An examination of the law itself indicates that the first step in the enforcement of the collection of delinquent taxes is the advertisement of the sale. This is the "beginning" of the proceeding.

Bouvier's Law Dictionary defines "initial" as "Beginning; placed at the beginning," and shows that the word was taken from the Latin "initum" meaning "beginning".

In the case of Beard vs. St. Louis A. & T.H. Railway Company, 44 N.W. 803, 804, 79 Iowa 527, it is held that the first carrier receiving goods is an "initial carrier".

Words of course are used in their common and ordinary sense and are to be so construed when interpreting laws. The conclusion is inescapable that the first advertisement constitutes the initial proceedings which is sufficient to stay the running of the statute of limitations. If the land is not sold pursuant to the first advertisement and is again advertised the second year the first advertisement is still the "initial" proceeding looking toward the enforcement of the collection of the tax as the prior advertisement and failure to receive a sufficient offer authorizes

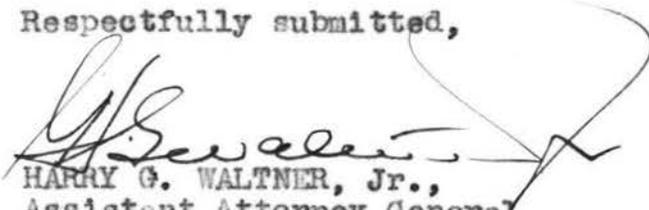
June 5, 1937

the subsequent further advertisement and offer, and the third advertisement and offer authorizes the sale of the property for what it will bring. To justify or permit any final sale for less than the full amount of the tax, penalty, interest and costs there must have been two prior advertisements and offers of sale. This we believe shows that under such circumstances it is but one proceeding, the beginning of which was the first advertisement of sale.

CONCLUSION.

It is therefore the opinion of this office that taxes for the year 1931 which became delinquent January 1, 1932, must be advertised and offered for sale in November of 1936, but if not sold for lack of sufficient bid the taxes should be again advertised the November of 1937, and if on that sale no sufficient bid is received the land may be offered for sale the third and final time in November of 1938, at which time the County Collector is authorized to sell the certificate for whatever sum it will bring.

Respectfully submitted,

  
HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

HGW:MM  
Enclosure.