

DRAINAGE DISTRICTS: Collection of costs in suits for delinquent drainage taxes.

July 3, 1937.

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Mr. A. F. Stanley, Sheriff,
New Madrid County,
New Madrid, Missouri.

Dear Sir:

This Department is in receipt of your letter of June 21st requesting an opinion as to the following:

"Am writing in request for an opinion from your office in regard to sale of land by Sheriff under Special Execution from Circuit Court for delinquent drainage taxes.

In this particular case, the St. John Levee and Drainage District of Missouri, a corporation, was plaintiff and a Mr. R. F. Baynes is their attorney. The land sold for the sum of two hundred (200) dollars and the total costs were two hundred and sixty five (265) dollars. Of the total costs, the attorney fee was two hundred and forty five (245) dollars. Should the Sheriff pay the attorney the full amount of two hundred forty five dollars as stated on back of Execution or a commission on the bid? Of course, in this instance the attorney fee is more than the bid but ordinarily if the fee is smaller than the bid, together with the costs, shall the attorney be paid the full amount of fee as stated on the Execution or not?

To whom shall the check be made out to if there is a surplus after all costs are paid? "

I.

We assume that your question pertains to a proceeding instituted by virtue of Section 11020 R. S. Mo. 1929 authorizing Drainage Districts to purchase lands offered for sale for their own taxes or assessments due thereon. Section 10328 R. S. Mo. 1929 relating to costs in all suits for the collection of delinquent drainage taxes provides, in part, as follows:

"The suit shall be brought by the attorney for the drainage district in the name of, and to the use of, the collector of the revenue, of the county wherein the land lies, against the land or other property, on which such drainage tax has not been paid. The pleadings, process, proceedings, practice and sales, in cases arising under this article, shall except as herein provided, be the same as in an action for the enforcement of the state's lien for delinquent general taxes upon real estate. ~~****~~ In all suits for the collection of delinquent taxes, the judgment for said delinquent taxes and penalty shall also include all costs of suit and a reasonable attorney's fee to be fixed by the court, recoverable the same as the delinquent tax and in the same suit."

In the case of *Chilton et al v. Drainage District*, 63 S. W. (2) 421, it was held that all costs, in delinquent drainage tax suits, must be collected out of the sale proceeds and that such costs may not be collected by separate action against the drainage district. Specifically, the Court said:

"The costs must be recovered and collected out of the proceeds from the sale of the property and are entitled to priority out of said proceeds over the claim of the state, county or drainage district."

If, therefore, the property sold under special execution on a judgment in favor of the drainage district did not bring enough to pay the costs and attorney fee in the case, the court officers and attorney have no alternative but to prorate the proceeds as their respective interests may appear.

In answer to your last question as to the disposition of the surplus after the payment of all costs, Section 10829, R. S. No. 1089 specifically provides for the immediate payment of the proceeds realized by the institution of these suits to the county treasurer to be accounted for by him in the same manner as drainage taxes.

Respectfully submitted,

JOHN W. HOFFMAN, JR., Assistant
Attorney General.

JWH:EG

APPROVED

(Acting) Attorney General.