

TAXATION: County Collector has the right to accept payment for less than all taxes, interest and penalties due and delinquent on land being advertised for the third sale.

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10-13



Mr. Bryan A. Williams  
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Dear Sir:

This office is in receipt of your request for an opinion, which is as follows:

"The County Collector has asked the following question with regard to the sale of land under the Jones-Munger Law:

On a track of land being advertised the third time, and the party who is delinquent with his taxes offers to pay part of his taxes (two years); has the County Collector the right to accept payment, and stop the tax sale?"

This office, in an opinion to the State Tax Commission, dated August 8, 1933, shortly after the effective date of Senate Bill 94, and prior to the passage of Senate Bill 54 of the Extra Session, held that the provisions of said Senate Bill 94 were mandatory, requiring the sale each year of all lands and lots upon which there were any delinquent and unpaid taxes; that said Senate Bill No. 94, as enacted, required the offering for sale each year of all tracts and lots for delinquent and unpaid taxes. In said opinion, it was held that the mandatory provisions of said Senate Bill No. 94, were not in any way affected or modified by Section 9961, R. S. Missouri, 1929.

Said Section 9961, R. S. Missouri, 1929, was repealed by Senate Bill 54 of the Extra Session of 1933, and the same was thereafter amended in Senate Bill No. 57 of the Session Acts of 1935, it being a statute with exactly the same wording as said Section 9961 of the 1933 Session Acts, except the proviso which was omitted and had no bearing on this question. Said Section 9961 in Senate Bill 57 of the Session Acts of 1935, is as follows:

"No action for recovery of taxes against real estate shall be commenced, had or maintained, unless action therefor shall be commenced within five years after delinquency, excepting taxes now delinquent, or which suit may be commenced at any time within five years after this chapter shall take effect, but not thereafter."

In an opinion of this office addressed to Hon. Charles M. Hay, City Counselor, City of St. Louis, on September 4, 1934, it was held that the message of the Governor authorized the General Assembly, at the Special Session, to consider the subject matter of House Bill No. 54, and he indicated that any enactment passed under this authorization was to apply to the proceedings contemplated in Senate Bill 94. His message authorized the repeal of the law relating to limitation of actions and the enactment of the law relating to limitation of sales in pursuance thereof. Said opinion held that said Senate Bill 54, provides that initial proceedings for the sale of lots may be commenced at any time within five years of delinquency, holding that:

"This provision is certain and must be given effect or the entire statute would be meaningless. This provision is to operate directly for the benefit and advantage of the taxpayer. It is remedial in nature and intended to modify the harsh requirements of Senate Bill 94, to-wit, the requirement that all lands and lots upon which taxes are delinquent be offered for sale each year. If the new Section 9961 does not have this effect it is entirely meaningless, for if all lands and lots are to be sold each year, initial proceedings will then be instituted the first year of delinquency (after the sale this November) and no taxpayer will be granted the

grace given by Senate Bill 54."

In conclusion said opinion, held:

"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."

The purpose of said Senate Bill 54 and Section 9961 thereof, was to give to the Collector the discretion as to when he was to advertise the delinquent lands and lots, but in case that the said Collector did advertise any lands or lots, he would have to follow the procedure provided in Section 9952a of said Senate Bill 94 of the Session acts of Missouri, 1933, which is as follows:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale; provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor. 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."

The above said opinion further stated:

"The mandatory character of Senate Bill No. 94, cannot be retained if the act of the Extra Session is to be given any effect. Therefore, we conclude that those provisions of Senate Bill 94 affected by Senate Bill 54, have become directory insofar as is necessary to give effect to the latter, and full benefit of this remedial law is to be given the taxpayer."

#### CONCLUSION

The above bill giving the collector discretion as to when tracts and lots of land on which taxes were delinquent, would be submitted for sale and the proviso in said Section 9952a which provided that delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor, further gave to said collector the right of selling all the delinquent property advertised at the third sale and in case that the owner or party interested desired to pay the delinquent tax on said property for any given number of years less than the total number of years for which said property was advertised for sale, the collector might accept a payment for a given number of years and dismiss as to the remaining years, if the remaining years for which said property was advertised and unpaid would not come within the statute of limitations as to the collection of delinquent taxes.

Therefore, it is the opinion of this office that a tract of land being advertised for the third time for a given number of years for delinquent taxes, and an interested party offers to pay part of the years, the county collector has the right to accept payment of the same and stop the sale as to the balance of said delinquent payments.

Respectfully submitted,

APPROVED:

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SVM MR