

TAXATION: Sales of delinquent lots and lands may be held at any courthouse located in the county if notice provides for same; if notice does not provide then sale to be held at county seat courthouse.

September 14, 1937

Hon. Andy W. Wilcox
State Tax Commission
Jefferson City, Missouri

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Dear Mr. Wilcox:

This is to acknowledge your letter as follows:

"Pursuant to Section 9960d authorizing and directing this Commission, with your advice, to determine the true construction and interpretation of the Jones-Munger Law, page 425, Laws of Missouri 1933, as amended by the 58th General Assembly, page 403, Laws of Missouri 1935.

Under the provisions of Section 9962b, it is provided that the list of delinquent lands and lots shall be published in the newspapers with general circulation, etc., and that to such lists shall be attached a notice that so much of said lands will be sold as is necessary to discharge the lien for taxes, interest and costs; and that the same 'will be sold at public auction at the Court House door of such County'.

There are several counties in this state which have more than one Court House, but the Jones-Munger Act does not make any provisions by its terms indicating which Court House shall be the situs of the sale. In some of these counties,

Collector's offices are maintained in both Court Houses, but the County is divided and the taxes on part thereof are payable at one Court House and taxes in the remainder of the County are payable at the other Court House.

In view of this situation, we will appreciate your opinion as to the proper construction of the term 'court house' as used in Section 9952b, page 405, Laws of Missouri, 1935."

The only question presented, for our opinion, relates to the interpretation to be given the words "court-house door of such county", found in Section 9952b, Laws of Missouri 1935, pp. 403-404.

In 1933 the Legislature enacted a law providing for a new method of collecting delinquent and back taxes, Laws of Missouri 1933, pp. 425-449 incl. and amendments. The method prior to 1933 for the collection of delinquent and back taxes was by suit in the circuit court. However, in 1933, provision was made for the advertising of lands and lots on which the state had a lien and for selling same at public auction to the highest bidder. Section 9952a, Laws of Missouri 1933, p. 430; Section 9952b, Laws of Missouri 1935, p. 403; Section 9952d, Laws of Missouri 1933, p. 432; Section 9953, Laws of Missouri 1933, p. 432.

Section 9952b, Laws of Missouri 1935, p. 403, required the county collector to publish a list of delinquent lands and lots and said notice to include, among other things, the following:

" * * * To such list shall be attached and in like manner so printed and published a notice that so much of said lands and lots as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of sale will be sold at public auction at the courthouse door of such county. * * *"

It is seen from a reading of Section 9952b, supra, that the Legislature instructed the county collectors to give

enough notice and information so as to apprise the public fully regarding the sale. In giving the notice, the time and place of the sale was to be included. The place of the sale to be at the courthouse door. The words "courthouse door" in some instances are ambiguous and, consequently, must be given a meaning that will accomplish the intent of the legislature when it enacted Section 9952b; Article 2, Chapter 4, R. S. Missouri 1929. For example, a courthouse will have several doors, to-wit: some in the basement, first floor, second floor, etc., and the collector apparently could conduct the sale at any door in the courthouse. However, we are of the opinion that the door at which the sale is held should be the entrance or main door to the courthouse. Likewise, there are two courthouses in several counties in the State of Missouri, and in such counties the word "courthouse" used in Section 9952b, supra, would be ambiguous. A county has statutory authority to provide for more than one courthouse. However, each county must at the established seat of justice provide a sufficient courthouse and jail, Section 12043, R. S. Missouri 1929. But after the establishment of a courthouse and jail at the established seat of justice the county court, if the voters so direct, they may erect and maintain other courthouses. We invite your attention to Section 12045, R. S. Missouri 1929, which reads in part as follows:

"All county seats or other cities or towns which are duly incorporated and in which circuit court is held as by law provided, are hereby authorized, upon such terms as may be agreed upon, in conjunction with their respective counties, to erect and maintain courthouses and jails in such county seats and in such other towns or cities where circuit court is held according to law, for the joint use of such county seats or other towns or cities and the county wherein they are located; * * *"

Thus the Legislature, by enacting Section 12045, permits the erection of additional courthouses in cities or towns other than at the county seat, and such courthouses as erected and maintained may be for the joint use of the county. There is a difference in meaning between the words "county seat," "seat of justice," and "courthouse."

Babcock v. Hahn, 175 Mo. 136; Bouldin v. Ewart, 63 Mo. 330; State ex rel v. Bates, 286 S. W. 420. Suffice it to say that there can only be one county seat and seat of justice, but there may be several courthouses. However, if there are two courthouses, one of such must be located at the county seat. When the Legislature in 1933 enacted Section 9952b, supra, it knew that several counties in this state had more than one courthouse, and as it provided in said law a means and method of giving as much notice as permissible in order to have as many persons present at the public auction, the conclusion is inescapable that the sale may be held at any courthouse in the county if the place of sale would cause higher bids to be received, in our opinion. However, in counties having two courthouses the collector should designate in the notice the courthouse where the sale will be had. To illustrate: A county having two courthouses, one of which is located at the county seat and the other in a distant city, the notice should designate that the sale will take place at the county seat courthouse (name place) or at the city courthouse (name city). Randolph County has two courthouses, one located at Huntsville, (the county seat) and circuit court is held at Moberly. If delinquent lands and lots located in Moberly were to be sold at Huntsville, perhaps a less amount would be bid than if such were sold at Moberly. Therefore, the county collector could divide the delinquent lands and lots to be sold and publish one group to be sold at the Huntsville Courthouse door, and the other group to be sold at the Moberly Courthouse door. It is not mandatory upon the collector to sell at both places, because he may sell at any one of the courthouses; the reason we are permitting by interpretation the selling at both places, being to affect a more accessible market in order to obtain better prices. However, if the collector advertises all properties without specifying the courthouse where the lands and lots are to be sold, it is our opinion that the collector must sell them at the county seat courthouse. State ex rel v. Bates, 286 S.W. 420.

Section 9957a, Laws of Missouri 1933, p. 438, provides for the form of deed to be executed by the county collector. Said deed recites in part as follows:

"* * * which it appears that the said A. B. did, on the _____ day of _____ 19____, purchase at public auction at the door of the courthouse in said county, the tract, parcel or lot of land lastly in this indenture described, * * *"

If property was sold at public auction in a county having two courthouses, then in said deed the courthouse at which the sale was made should be inserted. In other words, it should be inserted that the purchase was made at public auction at the door of the "county seat" or "city" courthouse in said county, as the case may be.

Section 9957b permits of the variation of the form of deed, if the substance of same is retained.

From the above and foregoing, it is our opinion that the county collector may, if his notice so provides, sell lands and lots at any main entrance door of any courthouse located in his county. However, it is not mandatory upon the county collector to conduct sales in two places, and if he desires to conduct the sale at only one courthouse in the county, then such sale should be conducted at the courthouse located at the county seat. We do not wish to be understood as holding that the county collector may conduct sales on the same property at two courthouses, as one sale at one courthouse is sufficient and all that the law requires.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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