

TAXATION AND : 1. Interpretation of Section 9950, Senate Bill
REVENUE : #94, as to compromise of taxes.
2. Redemption. Resale.

March 7, 1938.

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Mr. John G. Burkhardt
Associate City Counselor
and Tax Attorney
St. Louis, Missouri

Dear Mr. Burkhardt:

We wish to acknowledge your request for an opinion of March 1st, which is as follows:

"As you know, the Jones-Munger delinquent tax law has caused the City of St. Louis considerable concern. We have had to call upon your office for opinions several times since this law has been enacted, and are forced to do so again.

The specific inquiries we have are these:

I.

Section 9950 provides that the County Court, or proper officer, may compromise back taxes if it appears that the delinquent property "is not worth the amount of taxes, interest and costs due thereon * * * or if the same would not sell for the amount of such taxes, interest and costs."

What yardstick is the proper city official (the Comptroller) to use in determining whether the property would or would not sell for the amount of such taxes, interest and costs? Is it what the property would bring at a forced sale, or is it what the property would bring at a forced sale for taxes, or is it what the property would bring at a sale where the owner is willing to sell, but does not have to sell, and the purchaser is desirous

of buying, but does not have to buy? Or, should the Comptroller use the Assessor's assessment as a criterion of the worth of the property and as a further criterion of what it would sell for?

II.

Section 9954a, R. S. 1929, (Laws of Missouri, 1933, p. 434,) provides that the purchaser at a sale is entitled to possession one year from the date of sale, but that the owner or occupant may retain possession by making an assignment of rents in an amount sufficient to discharge the bid of the purchaser with interest.

If the owner or occupant assigns to the City of St. Louis rents upon property purchased by the City at a Jones-Munger delinquent tax sale, is that actual redemption? If so, doesn't the owner or occupant have to pay any balance of taxes that might be outstanding as being the difference between the City's bid and the delinquent taxes?

Section 9953b, R. S. Mo. 1929, (Laws of Missouri, 1933, p. 432,) provides, in part, as follows:

'* * * * but in the event of the redemption of any land from any sale made under the provisions of this act, the land so redeemed shall be liable to resale by such county collector at the next or any subsequent tax (sale of lands for delinquent taxes) for all delinquent taxes, penalty, interest and costs not paid by such sale.'

We construe this Section as meaning that if at a third sale of certain property the purchaser of tax certificate bids \$5.00, while the outstanding delinquent taxes at the time amount to \$100.00, the person redeeming must

pay the \$5.00 to the purchaser, plus interest, and must pay the county collector the balance of the taxes, or \$95.00. This view is in conformity with a previous opinion of your office.

However, the question arises as to just what procedure the collector is to take if the balance of the taxes "not paid by such sale" are not paid by the redemptioner. Does the collector have one sale, or does he have three sales? If he has one sale, does the property have to be bid in at the amount of the taxes, or will the highest bid purchase the property?

An opinion upon these questions as soon as the convenience of your office may make possible would be appreciated."

I.

Under the above section 9950, referred to in your letter, the proper officer may compromise taxes with the owner under the following conditions:

1. When any tract of land or town lot is not worth the amount of taxes, interest and cost due thereon as charged in "back tax book" or recorded list of delinquent land and lots in the Collector's office.

2. Where the same would not sell for the amount of such taxes, interest and cost.

The second prerequisite of said section comprehends the first, and is plain and unambiguous. In State ex rel. Publishing Company vs. Hackman, 314 Mo. 33, in passing on this question, the Supreme Court en banc, said:

"The legislature must be intended to mean what it has plainly expressed, and consequently there is no room for conclusion."

CONCLUSION

Therefore, it is the opinion of this department, that the proper officer should compromise said taxes if in his opinion said land and lots would not sell, at public sale, at Court House door for the amount of such taxes, interest and cost.

II.

Section 9953b of the 1933 Laws of Missouri, at page 432, is as follows:

"Such lands may be redeemed from such sale upon the same terms and conditions as other lands may be redeemed from delinquent tax sales, as provided herein; but in the event of the redemption of any land from any sale made under the provisions of this act, the land so redeemed shall be liable to resale by such county collector at the next or any subsequent tax sale of lands for delinquent taxes for all delinquent taxes, penalty, interest and costs not paid by such sale."

Section 9954a thereof is, in part, as follows:

"The purchaser of any tract or lot of land at sale for delinquent taxes, homesteads excepted, shall at any time after one year from the date of sale be entitled to the immediate possession of the premises so purchased during the redemption period provided for in this act, unless sooner redeemed; provided however, any owner or occupant of any tract or lot of land purchased may retain possession of said

premises by making a written assignment of, or agreement to pay, rent certain or estimated to accrue during such redemption period or so much thereof as shall be sufficient to discharge the bid of the purchaser with interest thereon as provided in the certificate of purchase. * * * Any rent collected by the purchaser, his heirs or assigns, shall operate as a payment upon the amount due the holder of such certificate of purchase, and such amount or amounts, together with the date paid and by whom shall be endorsed as a credit upon said certificate, and which said sums shall be taken into consideration in the redemption of such land, as provided for in this act. Any purchaser, heirs or assigns, in possession within the period of redemption against whom rights of redemption are exercised shall be protected in the value of any planted, growing and/or unharvested crop on the lands redeemed in the same manner as such purchaser, heirs or assigns would be protected in valuable and lasting improvements made upon said lands after the period of redemption and referred to in section 9956c."

Section 9956a, is as follows:

"Upon 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 postoffice 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. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In case the

party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time."

Section 9956d, is as follows:

"When lands sold for taxes, or any portions thereof, shall be redeemed, the county collector shall insert a memorandum of such redemption on the record of the certificate of purchase applicable thereto, stating the quantity or description of the portion redeemed, if not the whole, the date thereof, and by whom made, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming. The person redeeming shall then present to the county clerk the certificate of redemption and the county clerk shall then enter on his record of sales of land for delinquent taxes the recital of such redemption, the date thereof, and the person redeeming."

Under the provisions of Section 9953b, supra, in event of redemption of any land from any sale, the land so redeemed shall be liable to resale at the next or any subsequent sale of lands for delinquent taxes not paid by such sale.

Payment of such taxes, not paid by the sale to the certificate holder, is not a prerequisite to redemption; but a resale must be had at the next or any subsequent sale, therefore, to pay the sum, which clearly indicates one offering for sale.

If the legislature had intended that the procedure for resale follow the procedure for the original sale, the bill would have provided for a first, second and third sale. The language of said section plainly expresses that one sale is intended and consequently there is no room for construction.

In State ex rel. Barrett vs. Boeckler Lumber Company, 301 Mo. 445, 532, in speaking of whether a statute means what it says when it is plain, the Supreme Court en banc, said:

"Nor is it within our province to give the statute any other meaning than its language imports. Our duty to apply the statute as it is written, is as plain as the language of that statute, and in that language there is no ambiguity."

Under the provisions of Section 9954a, supra, after one year from the date of sale, the purchaser shall be entitled to the immediate possession of the land purchased thereunder, but the owner or occupant may retain possession thereof by making a written assignment of, or agreement to pay rent that may accrue during the redemption period or so much thereof as may be necessary to pay the amount of the certificate and interest thereon. Any rent collected by the purchaser, shall operate as a payment on the certificate of purchase and endorsed as a credit thereon, which said sums shall be taken into consideration in the redemption of such lands.

The primary purpose of Senate Bill #94 is not in the transfer of ownership, but to collect taxes and, whether taxes be paid in cash or rent, such payments shall be applied on the amounts set out in the certificate of purchase. When said amount is paid, together with the interest shown in the certificate, either by cash or rent, during the period of redemption, the Collector shall give notice of redemption as provided in Section 9956a supra, and make the records of redemption as required by Section 9956d. That constitutes actual redemption.

CONCLUSION

Therefore, it is the conclusion of this department that when taxes are not all paid at a third tax sale, the land must be resold for such unpaid taxes, after redemption, and that the payment of such unpaid taxes is not a prerequisite for redemption. That after redemption said land shall be liable to resale at the

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next or any subsequent tax sale of lands for delinquent taxes for all delinquent taxes, penalty, interest and cost not paid by such sale.

It is, further, our opinion that after one year the certificate holder shall be entitled to immediate possession of the premises unless the owner or occupant, thereof, assign the rent as provided in Section 9954a, supra, but that in event of such assignment of the rent, the certificate holder must endorse, as a credit upon the certificate, the amount so paid as rent, which sums shall be taken into consideration in the redemption of such land. The certificate holder is entitled to the amount shown by this certificate and the interest thereon and when said sums are paid in full, either by cash or rent, it becomes the duty of said Collector to give notice of such payments for redemption and, thereupon, make the records of the redemption as provided in said Section 9956d. That such procedure constitutes actual redemption.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

SVM:LB