

TAXATION AND  
REVENUE:

Property sold for general taxes under Senate Bill No. 94 vest title in the certificate holder upon the delivery of a deed unless parties in interest have exercised their right of redemption within the statutory period. Certificate holder must pay all subsequent and prior unpaid taxes.

November 28, 1938

Mr. R. L. Jones  
Clerk of County Court  
New Madrid County  
New Madrid, Missouri



Dear Mr. Jones:

We desire to acknowledge your request for an opinion on November 18th, which is as follows:

"Questions have arisen in this county as to several features of what is commonly known as the Jones-Munger law. Under Section 9956a, found in Laws of Missouri, 1933, at page 437, relative to the redemption of lands sold for taxes, is it your opinion that when the lands have no bid the first and second offerings but are sold for less than the amount of delinquent taxes at the third offering, that the original owner can come in and redeem this land for the amount bid by the purchaser, plus the customary interest, or must he pay the taxes in full, that was due or shown to be due at the time of sale? This question brings up another question that the land stands good for the taxes, and if the original owner redeemed it at a figure less than the full amount of taxes, the land would then stand good for the balance of the taxes, and this is one question we would like to get straight on.

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"Also when sold for state and county taxes, does this eliminate any mortgage, city taxes, drainage taxes or any other improvement taxes for the same years sold for, providing these other sub-divisions do not come in and redeem?"

"Also under Section 9957c, Laws of Missouri 1933, found at page 440, do you hold that the holder of purchase certificate must pay all taxes due at the time of being entitled to a deed, including drainage, city, special improvement taxes, or just state and county taxes?"

I.

Lands sold at a third sale for less than the amount of delinquent taxes may be redeemed by the original owner by paying the amount of the certificate and interest thereon, plus subsequent taxes paid.

This question was passed on by this department in an opinion to Mr. Mark W. Wilson, Prosecuting Attorney of Henry County, on January 4, 1937, a copy of which is enclosed.

II.

If the original owner redeemed land at a figure less than the full amount of the taxes, the land would then stand good for the balance of the taxes.

This inquiry is answered in an opinion rendered by this department to Mr. John G. Burkhardt, Associate City Counselor of the City of St. Louis, a copy of which is enclosed herein.

## III.

When land is sold for state and county taxes, does this eliminate any mortgage, city taxes, drainage taxes or any other improvement taxes for the same years sold for, providing such subdivisions do not come in and redeem?

The lien for taxes is not changed by Senate Bill No. 94 or the Jones-Munger Act. Such act is but a procedural statute for the enforcement of liens which are of the same nature after the passage of this act as they were before. We therefore look to the statutes establishing these liens and decisions concerning them. Decisions determining the nature of state and county liens, city liens and improvement tax liens and the priority of the same would still be applicable under the Jones-Munger Act insofar as the sale proceeding itself is concerned. One of the cases determining the respective priority of drainage district assessments and state and county taxes is that of Little River Drainage District vs. Sheppard, a decision of the Supreme Court en banc, reported at 7 S. W. (2d) 1013. In this case the plaintiff brought suit to collect delinquent drainage taxes assessed for the years 1921 to 1927. The answer alleged as a complete defense that the land was sold under judgment of the circuit court for general state and county taxes due for the years 1921 to 1924, and defendant claimed under that tax title. The question of the priority of these taxes and respective rights of the parties after the sale for state and county taxes were the problems determined bearing upon the issues here considered. The Court held in effect that as the drainage district was not a party to the suit it was not bound by the decision and that its lien for drainage district taxes was not cut out by such sale but that it could redeem the property from the purchasers at such sale, or could proceed to enforce its lien for drainage taxes and the purchaser at such sale could then redeem the property by paying the state and county taxes for which the property had been sold. In the course of the opinion the Court stated, l.c. 1014:

"The lien for state and county tax shall be paramount. The statute does not say that it shall necessarily destroy the district lien for special taxes. The plaintiff district, according to the stipulation and the finding of the trial court, was not made a party to this pro-

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ceeding. No person or corporation can be affected by a proceeding to which he or it is not made a party, and that applies to tax suits. For instance, the state's lien for taxes is superior to a prior mortgage lien, and a sale under such tax lien conveys title to the purchaser but does not affect the mortgagee's right to redeem. \* \* \* "

The foregoing decision is in respect to taxes levied by a drainage district organized by the Circuit Court. In Williams vs. Hudson 93 Mo. 524, in the course of the opinion the court says:

"Tax liens, whether prior in point of time or not are superior to the lien of the deed of trust."

In Allen vs. McCabe 93 Mo. 138, the court says:

"It must be remembered that, although the statute makes it necessary that the owner of the property should be made a party, and this is necessary to call into activity the jurisdiction of the court over the subject-matter, yet, when this is done, the proceeding is in rem against the property to enforce the lien of the State on that property, subordinate to which the owner holds his title; the judgment is in rem. The execution goes against, and the sheriff sells, the property, and not the interest of any particular person in it."

In Meriwether vs. Overly, 228 Mo. 218, the court says:

"A tax against real estate is a tax against

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the property, and not against the owner. If the taxes have been legally assessed they become a lien on the property prior to any other liens."

We shall now turn to the Jones-Munger Act to determine what provision is there made for the redemption of property after the sale of the tax certificate. Section 9956A, page 437, Laws of Missouri 1933, provides in part as follows:

"The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to exceed ten percentum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight percentum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption. \* \* \* "

By the foregoing provisions any person having an interest in the land is privileged to redeem within two years after the sale by complying with the provisions therein set out. This section should be construed liberally so as to encompass within its terms all persons or parties having an interest in the land. It must be construed as permitting the redemption from such sale by the drainage district or by the purchaser under the drainage district sale.

While the foregoing covers the matter of your inquiry, we direct further attention to Section 9957, page 438, Laws of

Missouri, 1933. This section provides:

"If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, \* \* \* \* \* the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold. \* \* \*"

The purchaser of a tax certificate at a sale held pursuant to the Jones-Munger Act is authorized to obtain a clear title to the land described in the certificate at the expiration of two years of the date of sale if by that date the land has not been redeemed by the provisions of this section. The title which he obtains is to be free and clear of all encumbrances, charges or taxes except a lien which was superior to the lien of the taxes for which the land was sold. Therefore, in the event that redemption is to be made under the provisions of this act, it should be made within two years of the date of sale, for if the purchaser of the certificate obtains a deed therefore it appears that he takes the property free and clear of all encumbrances and taxes existing at the time, and which were inferior to the taxes for which the land was sold.

#### CONCLUSION

Therefore, it is the conclusion of this department that if general taxes have been legally assessed they become

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a lien on the property prior to all other liens, and that under the provisions of Senate Bill No. 94 any parties in interest may, within the two year period, redeem, but in event such parties in interest do not exercise such right of redemption within such period and the certificate holder performs the duties enjoined upon him by the statute and receives his deed, such deedholder receives a title to the property free from any and all rights of such parties in interest.

IV.

Under Section 9957c, Laws of Missouri 1933, at page 440, do you hold that the holder of a purchase certificate must pay all taxes due at the time of being entitled to a deed, including drainage, city, special improvement taxes, or just state and county taxes?

We presume your inquiry relates to a tax sale for general taxes. Section 9957c, Senate Bill No. 94, Laws of Missouri 1933 is in part as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for deed, \* \* \*" (Underscoring ours)

The certificate holder shall before being entitled to apply for a deed pay:

(1) All taxes which have accrued on the land or lot since the issuance of said certificate. The collector must collect the taxes for towns and villages, also for levees and certain drainage districts, but such collections are made by him not as county collector, but merely because by statute the collector has been designated to make such collections for such organizations and his actions in making their collections are distinct from his actions in collecting

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general taxes. As tax collector, in making sales under Senate Bill No. 94 for general tax and issuing a certificate therefor, before issuing a deed after the expiration of two years, to such certificate holder, the collector shall require the certificate holder to pay all general taxes which have accrued on the land or lot since the issuance of the certificate.

(2) Any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for a deed.

In Little River vs. Sheppard 75 S.W. (2d) 1013, l.c. 1014, the court en banc said:

"The lien for state and county tax shall be paramount."

In Meriwether vs. Overly 228 Mo. 218, the court says:

"A tax against real estate is a tax against the property and not against the owner. If the taxes have been legally assessed they become a lien on the property prior to any other liens." (Underscoring ours)

Therefore, general taxes are prior to drainage and other improvement taxes as well as city taxes and such taxes being inferior to general taxes, the same can not be classified as prior taxes, designated in Section 9957c, supra.

#### CONCLUSION

Therefore, it is the opinion of this department that:

(1) Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described in the certificate pay to the collector all general taxes that have accrued thereon since the issuance of such certificate.

(2) That the certificate holder shall before being entitled to apply for such deed pay only prior taxes that may

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remain due and unpaid on said property and the lien for which was not foreclosed by sale under which such holder makes demand for a deed, and, drainage and other improvement taxes as well as city taxes, not being prior taxes, it is not incumbent upon the collector to collect the same as a prerequisite to the certificate holder being entitled to a deed.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
(Acting) Attorney General  
SVM:RT