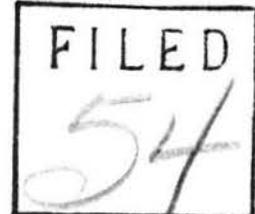


TAXATION AND REVENUE: A deed delivered under and by virtue of Section 9957a of Senate Bill 94 extinguishes the liens of city sewerage districts insofar as such liens apply to the period prior to the issuing of the certificate of purchase.

January 27, 1938

Mr. Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Mr. Long:

We wish to acknowledge your request for an opinion on January 19th, 1938, which is as follows:

"Please give me a ruling on the following situation.

There are certain pieces of real property in this City which have been sold for delinquent state taxes. On these particular pieces of property there happens to be delinquent sewer tax bills and the holder of such delinquent sewer tax bills has now brought suit for the enforcement of his lien. Kindly advise me whether or not that a purchaser of the Tax Certificate gets a good title after his two year period, that is free of all sewer tax liens of this kind.

I understand of course that this person who holds the sewer tax lien has an interest in such property and could redeem the same but upon his failure to do so has his tax been cut out?"

Under Section 6994, Article VIII, Chapter 38, R. S. Mo. 1929, providing for the assessment and levy of taxes for a city of the fourth class, it is provided that:

"A lien is hereby created in favor of such city against any lots or tracts of land for any such tract assessed by such city against the same, which said lien shall be superior to all other liens or encumbrances except the lien of the state for state, county or school taxes."

Section 7032 of the same chapter provides for the creation of sewerage districts in cities of the fourth class and the levy and assessment of a special tax by ordinance against such lot or tract of land within the district in the name of the owners thereof and for the issuance by the clerk of a certified tax bill under the seal of the city to be signed by the mayor and attested and recorded by the city clerk and to be delivered to the contractor for the work, who shall proceed to collect the same by the ordinary process of law in the name of the city to his own use. Said Section reads in part as follows:

"Provided however, that if any installment is not paid when the same becomes due the remaining unpaid installments shall, at the option of the holder of the tax-bill, become immediately due and payable. Every such certified tax-bill whether the same be made payable in installments or not, shall bear interest at the rate of eight per centum per annum from thirty days after the date of issue until paid, and shall be a special lien against the property described therein for a period of five years from its date, except when made payable in installments, when the special lien shall for a period of one year after the date of the last installment payment shall become due. Every such certified tax-bill shall on action brought to recover the amount thereof be prima facie evidence of the validity of the charges against the property therein described and of the liability

of the person or persons therein named as the owner or owners of such property. (R. S. 1919, Sec. 8483. Amended, Laws 1921, p. 503.)

In the case of Missouri Real Estate and Loan Company vs. Burrie, 202 Mo. App., page 242, l.c. 244, in passing on the question as to whether the lien of a subsequent general city tax lien is superior to the lien of a prior special tax bill issued by the city for public improvements, the court said:

"It must be conceded that a general tax which has primarily for its object the support of the government whereby the government may exist, and lives and property may be protected and the pursuit of happiness guaranteed, is of great dignity and more importance than a tax bill issued for public improvements. It is true that a general tax is frequently levied for public improvements. But it is not feasible to levy a special tax, of the nature here involved, for what we understand to be meant by the expression, 'support of the government.' We can subsist without the special tax but no civilized government could be organized and maintained without the general tax. So we conclude that the general tax being first in vital importance should be allowed first place in the means of payment.

" * * * * The Jaicks case was decided by this court, but certified to the Supreme Court by reason for one conclusion being contrary to that of the St. Louis court of Appeals found in 150 Mo. App. 188. The Supreme Court took our view as expressed by Trimble, J., who wrote the opinion. In that case (264 Mo. p. 700) Judge Trimble

said that: 'It is true, general taxes are levied for the support of the government and in that sense general taxes are the more important of the two and ought to take precedence over special taxes, so that the lien of a general tax ought to be prior to a special tax, even though the latter be prior in point of time.'

"So it was said in McCullum v. Uhl, 128 Ind. 304, 308, that: 'The lien of the State for taxes is paramount and is superior to the lien of the ditch assessment.' In State v. Kilburn, 81 Conn. 9, it was held that a special sewer tax assessment by a city could not be given preference over a prior school fund mortgage authorized by the State. At the close of the opinion (p. 13) the court in referring to special assessments, said: 'They are imposed by authority of the State, and by a political agency of the State, which, so far forth, participates in the exercise of its sovereignty. But because a city to that extent shares in the privilege of a sovereign to command a preference over ordinary creditors, it does not follow that it can command it as against the sovereign itself.'"

Section 9952a, Senate Bill 94 (Laws of Mo. 1933, p. 425-449) provides in part 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;

* * * * *

A reading of the above section shows that it is not now necessary when the State's lien is foreclosed to apprise the owner or any person having a lien or interest in said land. This is radically different from the suit previously brought in the circuit court which extinguished any and all liens if such were parties to the suit. Little River Drainage District v. Sheppard, 7 S. W. (2d) 1013.

When land is sold under Section 9953a of said law for delinquent and unpaid taxes the county collector gives to the highest bidder a certificate of purchase. The purchaser of said certificate may get possession of the premises one year after date of sale, by virtue of Section 9954a, and at the expiration of two years if the property has not been redeemed it is conveyed to the holder of the certificate of purchase by the county collector by a form of conveyance which is "prima facie evidence of a good and valid title in fee simple." Section 9957a.

Section 9956a 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 Senate Bill 94 we thus have a complete scheme for the foreclosing of the State's lien, and specifically gives the right of redemption to any owner or person having an interest therein in said land to redeem same within two years. After a lapse of two years, upon application of the holder of a certificate of purchase, a title in fee simple is given by the county collector.

While you ask the question as to the extinguishing of the lien for delinquent sewerage district taxes by virtue of the sale of such land by the county collector, yet, your question is divis-

ible into two parts: (1) Is the lien extinguished at the time the certificate of purchase is issued, or (2) is the lien extinguished at the time the county collector gives a deed two years after the certificate of purchase?

As Senate Bill 94 was enacted in 1933 we have been unable to find any case that has been adjudicated by the court which is determinative of the question and supporting our conclusion. However, prior to the enactment of Senate Bill 94 many cases were decided by the court on the question involved. In *Little River Drainage District v. Sheppard*, 7 S. W. (2d) 1013, the court said (p. 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 finding of the trial court, was not made a party to this proceeding. No person or corporation can be affected by a proceeding to which he or it was 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."

In said suit the court held that because the drainage district was not made a party to the tax suit that said suit would not have the effect of extinguishing or satisfying the drainage district's lien. However, the court made this pointed observation (p. 1014):

"If the district had been made a party to the proceeding with an opportunity to meet and pay the general taxes at the time, a different question would be presented for consideration."

Also, in *McAnally v. Little River Drainage Dist. et al.*,

28 S. W. (2d) 650, the Supreme Court of Missouri, en banc, made this remark:

"Since the ruling in Little River Drainage District v. Sheppard, 320 Mo. 341, 7 S. W. (2d) 1013, respondents concede they lost their lien for delinquent annual installments levied prior to the levy and subsequent sale of the land in question for state and county taxes for the year 1926."

In the case of Dyer vs. Harper 336 Mo. 52, an opinion was rendered on December 1, 1934, it being after the passage of Senate Bill 94, but based upon the 1929 statutes. On page 56 the court said:

"The lien created by the judgment for state, county and school taxes was superior to the lien for drainage taxes. In the suit to enforce the collection of state, county and school taxes the Big Creek Drainage District No. 2 was not made party, and therefore its lien was not destroyed by a sale under such a judgment. At a sale under a judgment for drainage taxes, the purchaser would acquire the right to redeem in an action against the holder of the tax title, by making a proper tender of the amount due the holder of the tax title. (Little Drainage District v. Sheppard, 320 Mo. 341, 7 S. W. (2d) 1013.)

Section 9952a of Senate Bill 94 provided that it was not necessary to include the name of any person claiming an interest in and to the lands in the notice of sale. Section 9956a thereof gave such party the right of redemption within two years following the sale and Section 9960c gave lien holders the right to pay taxes and obtain an additional lien therefor. Section 9957 thereof imposed upon such person the burden of

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exercising such rights under said statutes within two years from the date of sale or be barred when the certificate holder received the deed, "which shall vest in the grantee an absolute estate in fee simple".

CONCLUSION

It is, therefore, the opinion of this department that the liens for a sewerage district in a city of the fourth class do not become extinguished at the time the certificate of purchase is delivered because of the provisions of Section 9956a for redemption.

It is our further opinion that when the deed is delivered by virtue of Section 9957a, the sewerage district liens in such city become extinguished and satisfied insofar as such liens apply to the period prior to the issuing of certificate of purchase.

Respectfully submitted,

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APPROVED:

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