

TAXATION AND
REVENUE:

Lands sold under Senate Bill No. 94 for the taxes of several years should be sold at one time for all the taxes charged against the land, which are delinquent, at the time of such sale.

November 29, 1938



Senator J. C. McDowell
Charleston
Missouri

Dear Senator McDowell:

We desire to acknowledge your request for an opinion on November 19, 1938, which reads as follows:

"I am tax attorney for Mr. Gilmore, Collector of Mississippi County, Missouri. He has been informed by the State Auditor's office on certain propositions of law, relating to the collection of general taxes, of which I believe he either misinterpreted or the State Auditor's office does not know what they are talking about, and I am asking you for an opinion, that I might properly direct him.

"Mr. Gilmore says that he has advertised taxes for 1935, prior years three times, and sold the land so advertised, in 1938. He had advertised 1936 twice, and 1937 once. Now he says that when he sells for 1935 and prior years, that that settles the taxes for 1936 and 1937, because the land has been advertised three times under the former years. Now he concedes that 1936, which has only been advertised twice, and 1937, once, that the bid was in the full amount as required by the Statute, but he says that since 1935 and prior years

have been advertised and offered for sale three times, that that gives him authority to sell this land for whatever it brings and cancels 1936 and 1937, which have not been advertised but once. Now if that is the law, they had better be writing some new Statutes. The Statute specifically says that lands cannot be sold for less than the taxes, for any year, unless they have been advertised three times, and of course 1936 and 1937 had not been advertised three times. I want an opinion from you on that proposition.

"I also want your opinion on another proposition. What is the duty of the Collector under the same set of facts, where he has advertised the land three times and offered it for sale three times for 1935 taxes, and he had advertised the land twice for 1936, and offered it for sale, and he has advertised the land one time for 1937 and offered it for sale, if a purchaser of a certificate for the 1935 taxes and prior years buys without the land having been sold for 1936 and 1937 taxes. Can the Collector issue a certificate when there are delinquent back taxes unpaid, or must he make the buyer at the time he receives his certificate for the 1935 taxes, pay up all the back taxes before he can issue him a certificate. I will greatly appreciate an opinion from you on these matters * * "

Section 9952a of Senate Bill No. 94 of the 1933 Session Acts 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." (Underscoring ours)

Section 9952b of Senate Bill No. 94 of 1933 Session Acts is in part as follows:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. And it shall only be necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost due thereon, each year separately stated, and the land therein described shall be described in forty-acre tracts or other legal subdivision, and the lots shall be described by number, block, addition, etc.; provided, however, that if a part or parts of any forty-acre tract

or other legal subdivision or lot is assessed on the tax books to two or more parties as owners thereof, then, as to such land or lots, such list shall be so prepared and separated. 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, on the first Monday in November next thereafter, commencing at ten o'clock of said day and continuing from day to day thereafter until all are offered."
(Underscoring ours)

Section 9952c of Senate Bill No. 94 of 1933 Session Acts is in part as follows:

"On the day mentioned in the notice, the county collector shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed or belonging to each person assessed, shall be sold as will pay the taxes, interest and charges thereon, or chargeable to such person in said county."

Section 9952d of Senate Bill No. 94 of 1933 Session Acts is in part as follows:

"When more than one tract or lot belonging to the same person shall be for sale at the same time, in the same municipal corporation or township, a part of one of said tracts or lots shall be offered, first for the payment

of the whole sum due from such owner on all such delinquent lands or lots, or otherwise; and if no person shall bid off a part of such tract or lot the sum required, the said tract or lot shall then be offered to the highest bidder for cash, and if any amount shall yet remain due, or if no person bid for a part or all of one tract or lot, each of the other tracts or lots shall be offered in like manner until the required sum is realized; and if no one bids upon a part or all of said tracts or lots separately, enough to pay the amount due, then the whole of said tracts and lots shall be offered together and sold to pay the taxes, penalty, interest and costs thereon;
* * * * * (Underscoring ours)

Section 9953 of Senate Bill No. 94 of 1933 Session Acts is as follows:

"If at the first offering of sale of any tract of land or lot under the provisions of this act no person shall bid therefor a sum equal to the delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact in his record of sale and the county collector shall note a recital thereof in his record containing the list of delinquent lands and lots, and said tracts of land or lots shall be again offered for sale, at the next sale of delinquent lands and lots as in this act provided, if such lands or lots be at such time delinquent. If at the second offering for sale no person shall bid therefor a sum equal to the then delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact upon his record of the sale,

and the county collector shall enter a recital of such fact in his record book containing the list of delinquent lands and lots."

Section 9953a of Senate Bill No. 94 of 1933 Session Acts is as follows:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell the same to the highest bidder, and the purchaser thereof shall acquire thereby the same interest therein as is acquired by purchasers of other lands at such delinquent tax sales." (Underscoring ours)

Section 9953b of Senate Bill No. 94 of 1933 Session Acts 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 9957 of Senate Bill No. 94 of 1933 Session Acts is in part as follows:

" * * * 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." (Under-scoring ours)

A proceeding in foreclosure of delinquent taxes under Senate Bill No. 94, supra, is an action in rem.

In the case of Allen vs. McCabe 93 Mo. 138 involving taxes for 1876, 1877 and 1878, 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."

This rule was restated in the case of Construction Company vs. Ice Rink Company 242 Mo. 241, l.c. 253-254.

In Construction Company vs. Ice Rink Company, supra, l.c. 255, the court cites a Minnesota case in establishing a rule as to the question of summary remedies in enforcing tax collections in the following language:

"The fact has also been recognized from time immemorial that every sovereignty ought to be armed with the requisite power to enforce the collection of taxes without fail, and to compel the prompt payment of whatever imposts it sees fit to levy for its own support. In view of that necessity it has been a common practice to provide summary remedies for enforcing such demands, which have been upheld by the courts whenever assailed, although it is quite probable that some of the remedies so provided could not have been sustained as affording due process of law, if the proceedings had related to the collection of purely private debts."

Senate Bill No. 94 providing for the enforcement of delinquent taxes and therefore being an action in rem, provides further that such collection shall be made in a summary manner.

The sale should be made for the taxes charged against the land, which are delinquent, at the time of such sale. This means all delinquent taxes. We are unable to find any provision in said Senate Bill No. 94 requiring that each years taxes be advertised three times.

We do not find where this question has been passed upon by the appellate courts of Missouri, but we do find that the appellate courts of other states have construed it.

In the case of Worthen vs. Badgett et al 32 Ark. Rep. 496, l.c. 533, in passing on this question, the Supreme

Court stated:

"There should have been but one offering and sale of each tract or lot, for all of the taxes, etc., charged upon it."

In giving an example for such conclusion, the Court said in *Worthen vs. Badgett*, supra, at page 533:

"Suppose, for example, that A had bid off a tract for the taxes of 1873, and the collector had put it up again for the taxes, etc., of 1874, and B had purchased it, and on the next offer for the taxes, etc., of 1875, C had bought it, who would be entitled to the land? It would be like the woman of the Scriptures who had seven husbands, and the question was, which of the seven would have her in the resurrection?"

In *Preston vs. Van Gorder* 31 Iowa 250, l.c. 253, the court passed upon this question in the following language:

"The treasurer possesses no power or authority, independent of the statute, to sell lands for delinquent taxes. His authority is derived alone from the statute, and in the exercise of the authority conferred he must conform strictly thereto. *Abel v. Cross*, 17 Iowa, 171. This section gives the treasurer no discretion to sell lands now, for the delinquent taxes of the preceding year, and again for those of a former year. He is 'required to offer' them 'at public sale' (not sales), 'and such sale' (the only sale authorized by law) 'shall be made for and in payment of

the total amount of taxes, etc., due and unpaid thereon. He has authority to make but one sale for delinquent taxes then due and unpaid. This is clearly the limit of his authority under section 763, and no where else in the statute do we find any authority for a second sale for taxes delinquent, and unpaid at the time of the first sale. The statute conferring the authority on the treasurer to sell lands for delinquent taxes also limits it. Beyond the authority thus conferred, he cannot go.

"If the treasurer fails to sell, as the law requires him to do, 'for the total amount of taxes, interest and costs delinquent,' he may possibly render himself liable on his official bond, but as this question is not before us, we do not pass upon it."

The same court construed this question in Shoemaker vs. Lacy 45 Iowa 422, l.c. 424:

"The District Court found that the plaintiffs had not redeemed. This court reversed the decision. Now the reverse of that decision certainly is that the plaintiffs had redeemed. And such indeed appears to have been the fact. They had redeemed from the sale as shown in certificate No. 214, and that was really the only sale; the other sale was made without authority of law and was void. Section 763 of the Revision provided that 'the sale shall be made for and in payment of the total amount of taxes, interest and costs due and unpaid.' The sale then made as shown in certificate No. 214 must be regarded as having been made 'for and in payment of the total amount of taxes,' etc. There was then

no tax for which the land could be sold again at that time. This was held substantially in *Preston v. Van Gorder*, 31 Iowa, 250, and *Miller, J.*, in his opinion in the case at bar cites approvingly that case, and holds that the second sale was unauthorized. But it is plain to see that it was unauthorized because the first sale was made 'in payment of the total amount of taxes' on the property. It was not, therefore, a sale from which a redemption was necessary."

The same principle was stated in *Barker vs. Hume* 84 Neb. 235, l.c. 236:

"It was provided by the revenue law in force at that time that the treasurer should sell each tract of land on which the taxes are delinquent to the person who offers to pay all of the taxes due thereon. The command of this statute is imperative, and a sale for a less amount is a void sale. *Adams v. Osgood*, 42 Neb. 450; *State v. Helmer*, 10 Neb. 25; *Tillotson v. Small*, 13 Neb. 202; *O'Donohue v. Hendrix*, 13 Neb. 257. Such a sale is not a sale of the land at all, and its only effect is to transfer the tax lien of the county to the purchaser.

In the case of *Barker vs. Hume*, supra, the court cited *Grant vs. Bartholomew* 57 Neb. 673, which had construed this principle.

CONCLUSION

Therefore, it is the opinion of this department that

lands if legally advertised by three newspaper publications at each sale, and sold under and by virtue of Senate Bill No. 94 for the taxes for several years, should be sold at one time for all the taxes charged against the land, which are delinquent, at the time of such sale.

Respectfully submitted,

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APPROVED:

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