

TAXATION: Under Jones-Munger law an occupant or any interested party, as well as the owner, may redeem from tax sale.

February 16, 1938

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Honorable Onie D. Newlon,
Prosecuting Attorney,
Ralls County,
New London, Missouri.



Dear Sir:

We acknowledge receipt of your letter, which is as follows:

"IN RE: Section 9956a of Session
Acts of 1933 at page 437.

"I would like to have your interpretation of the following portion of the above act which reads as follows, 'The owner or occupant of any land or lot sold for taxes, or any other person having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner:'.

"A tract of land in my County containing about 15.75 acres of land title to which was and is in a bank that has ceased to exist since 1929, has since 1929 and for about five years prior thereto been used and occupied by a man owning the adjoining farm. In November, 1937, this 15.75 acre tract was sold by the Collector for taxes, and a man living about five miles away purchased the farm and a certificate was issued to him. Upon learning of the sale, the man who owns the adjoining land and who has been in possession of the same since the year 1924 tendered the taxes and penalties to the Collector, and the Collector refused the tender holding that this man had no right to redeem. I advised the

Collector that it was my opinion and belief that this man did have the right to redeem as the language of the statute uses the word 'occupant' and also the words 'or any other person having an interest therein', and certainly the man offering to redeem was an occupant or a man having at least a possessory interest.

"Would you be so kind as to advise as to your interpretation of this matter."

Replying thereto, we refer particularly to that part of your letter stating that "the man who owns the adjoining land and who has been in possession of the same since the year 1924 tendered the taxes and penalties to the Collector, and the Collector refused the tender, holding that this man had no right to redeem." It would seem from this that the Collector is acting more in the capacity of a court in determining rights in land than in the primary duty cast upon the Collector, to-wit, to collect the taxes for the state, county and other political subdivisions.

The main function of the Collector's office is to collect taxes. This is true of all classes of taxes, whether they be the current or delinquent taxes. The Jones-Munger Law passed by the Legislature in 1933 (Laws of Missouri, 1933, pp. 425, et seq.) clearly so indicates and sets forth the duty of the Collector with reference to the collection of the delinquent taxes, the primary thought interwoven all through the act being to provide for a quick and inexpensive method of collecting the delinquent taxes.

Section 9949 places upon the Collector the duty of collecting the taxes "contained in such 'back tax book.'"

Section 9952a carries out the above idea in providing that delinquent taxes "may be paid to the county collector at any time before the property is sold therefor."

Likewise, Section 9952b states that the notice shall specify that "so much of said lands and lots as may be necessary to discharge the taxes * * * will be sold * * *."

So, also, Section 9952d provides that when several tracts belonging to the same person are to be sold at the same time, "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, * * *."

Section 9954 requires the Collector to indorse on the certificate of sale to the purchaser his written guaranty warranting that the taxes due upon the tract, lot or lots, * * * are named in such certificate. And if it should at any time appear that such county collector had, before the time of making such guaranty, received, either in person or by deputy, the taxes * * *, the holder of such certificate is entitled to his action upon such written guaranty," or may sue the collector on the collector's bond.

Section 9954a further emphasizes that the primary object of the Jones-Munger Law is not the transfer of ownership, but is to collect the taxes. It provides that any rent collected by a purchaser at such sale "shall operate as a payment upon the amount due the holder of such certificate of purchase, and such amount or amounts, * * * 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."

The same thought is further emphasized by numerous other sections of the act. See Sections 9954d, 9955a, 9955b, 9955c, 9956a, 9956b, and 9957.

When the property has been sold for taxes, the purchaser at the sale only gets a certificate of purchase. It does not authorize him to go upon the land any more than if he had not bought the certificate of purchase. His rights do not extend to the point where he can exercise any dominion over the land until one year after the sale.

Section 9956a provides the method of redeeming lands when sold for delinquent taxes. It provides:

"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, * * *. 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"

notice of such deposit for redemption, and further provides that such notice shall stop payment to the purchaser of any further interest or penalty.

The only rights the purchaser has prior to one year after the date of the sale are that he shall be made whole for the amount of money he paid the collector at said sale plus the interest specified in the certificate of purchase. The object of the law is to sell lands for taxes only as a last method left for collecting the taxes.

The Jones-Munger Law was not enacted for the primary purpose of determining title to land, nor for the purpose of settling conflicting claims of different parties to a given tract of land on which there are delinquent taxes. A person redeeming land, whether he be the owner or occupant or some other interested person, does not thereby acquire any title to the land, but the redemption merely places the land in the same position as it would have been if it had never been sold for the payment of delinquent taxes.

The statute defining who are parties entitled to redeem is plain. It says that the owner, occupant or other interested person may redeem the land. If no one but the owner of the land could redeem it, then no meaning at all can be given to the further designated parties as the statute provides. They would be empty words. The Legislature necessarily meant that anyone of the three classes was authorized to redeem the land.

Your question more particularly deals with whether an occupant of land, who is in possession of it, is entitled to make tender to the Collector, and whether it is the duty of the Collector to accept that tender.

In *West End Brewing Co. v. Osborne*, 238 N. Y. S. 345, 347, 227 App. Div. 340, the court said that the erection by the owner of advertising signs on land sold for taxes and the use of the sign to advertise the owner's products, although the name of the owner did not appear on the sign, constituted actual occupancy of the land within the tax law of that state requiring notice to redeem from a tax sale to be served on occupants of land, where the use of the land was the appropriate one according to the locality.

In *City of Indianola v. Faison*, 132 So. 550, 552, 159 Miss. 520, the court said that an occupant was one who occupies and takes possession; one who has the actual use or possession, or is in possession, of a thing, and that generally the words "possession and occupation" are used synonymously with reference to land, leases and like incidents.

In *Robinson v. Ramsey*, 176 S. W. 282, the Springfield Court of Appeals, in 1915, approvingly quoted from the case of *Bartlett v. Draper*, 23 Mo. 407, 409, as follows:

"Any act done by himself (the plaintiff) on the premises indicating an intention to hold the possession thereof to himself will be sufficient to give him the actual possession."

It is not difficult to conceive that a person in possession of land is an interested party, even if the statute did not provide that an occupant could redeem the land. A person in possession of land may, by the continuance of that possession, have not only a possessory right, but if he retains that possession adversely to all others for the statutory period, he, by such retention, acquires the title itself to the land. But between the time he first takes possession of the land and ten years thereafter that he has adversely held the land, he has a possessory right, and that right is to hold the possession of that land until another with a superior right to the possession has asserted that right in court and procured a judgment of the court entitling the "other" to such possession, and the man in possession is both an occupant and one interested in the land, within the provisions of Section 9956a. Doubtless the Legislature had in mind that a person occupying or in possession of land had an interest which he could protect by redeeming if he saw fit to exercise the right of redemption which the Legislature by said Section 9956a provided.

A person not in possession of land is not authorized under the law to, of his own main strength, enter upon the land and oust the person who is in possession. In the Robinson case, supra, the defendant sought to take possession of land by his own efforts, and the court, speaking of such actions, said the following, page 283:

"If defendant owned an interest in this land, the law requires him to establish his right in an action brought for that purpose. He cannot assert his right by any short cut, such as taking possession of the land in the manner here shown. The law does not permit one to redress his grievance with his own hand."

In State ex rel. Barrett v. Boeckeler Lumber Co., 301 Mo. 445, 532, speaking of whether a statute means what it says when it is plain, the Supreme Court of this state 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."

To like effect, see State ex rel. Publishing Co. v. Hackmann, 314 Mo. 33, decided by the Supreme Court en banc in 1926, where the court said:

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

So this statute, Section 9956a, is plain and free from ambiguity, and the Legislature meant what it has plainly expressed, to-wit, that an occupant or one interested in the land is entitled to redeem the same when it has been sold for the collection of delinquent taxes under the Jones-Munger Law.

CONCLUSION

In view of the fact that the primary duty of the Collector is to collect the taxes and not to settle land titles in other ways or among other people than insofar as the collection of the taxes is concerned, and in view of the further fact that the Legislature has not seen fit to vest the Collector with wider powers in the exercise of a judicial discretion, and in view of the further fact that the person redeeming land from a tax sale does not thereby acquire a greater title than he would have had if the land had not been sold for taxes, and in view of the further fact that the statute has plainly stated that anyone of the three classes of people, to-wit, the owner, the occupant, or other interested persons, may redeem the land from such tax sale, and has provided how the same shall be done, that is, by tendering the amount to make whole the purchaser of the tax certificate plus interest, plus costs, it is our opinion that when one in possession of land that has been sold for taxes tenders to the Collector the amount of money sufficient to reimburse the purchaser at the tax sale in full for the amount of money he has bid at the tax sale, plus the interest specified in the tax certificate, plus the costs incident to the sale, he is entitled to redeem the land, and it becomes the duty of the Collector to accept said tender and thereby to collect the taxes on behalf of the state and other political subdivisions thereof. To do otherwise might render the Collector liable on his bond.

Yours very truly,

S. V. MEDLING,
Assistant Attorney General.

APPROVED:

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

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