

TAXATION AND
REVENUE:

Certificate holder under Senate Bill 94 failing to pay subsequent taxes forfeits priority when said land is sold for same. Limitation of redemption begins to run on date of issuance of second certificate.

October 26, 1938

Mr. Arthur U. Simmons
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Dear Mr. Simmons:

We desire to acknowledge your request for an opinion on October 20th, which is as follows:

"As you know I am attorney for Willis W. Benson, Collector of St. Louis County, and I would appreciate an opinion on the following:

FACTS:

In 1935 a tax certificate was issued to John Smith under the Jones-Munger Law for purchases of delinquent taxes under said law. John Smith failed to pay the taxes prior and subsequent to issuance of a certificate of purchase. In 1936, the property again came up for sale because Smith had failed to pay the taxes on said property. Jones bid this property in and a certificate of purchase has been issued. Smith goes to Jones and gets Jones to assign his interest in his 1936 tax certificate.

The question is whether the two year redemption begins in 1936 or whether it begins on the prior 1935 certificate.

We have been holding that since Smith did not pay his taxes and the property was again sold and Jones received it, that the certificate would begin to run from the latter sale. Since Smith loses all of his rights in this property by reason of his failing to pay the taxes for a subsequent purchase other than receiving his money back that he paid for his 1935 certificate and the fact that he might get an assignment of later purchase has been held, by us not to alter the fact.

I would appreciate very much if you would straighten us out on this matter in order to save litigation.

Thanking you very much I am,"

An answer to your inquiry necessitates a construction of Section 9957 and 9957c of the 1933 Session Acts of Missouri which are as follows:

"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, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyor, 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. In making such conveyance, when two or more parcels, tracts, or lots of land are sold for the non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall in anywise become the owner of the certificates thereof, all of such parcels shall be included in one deed."

"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, and any purchaser that shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property included in his certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser, and such subsequent purchaser shall at the time of obtaining his certificate redeem said first certificate of purchase outstanding by depositing with the county collector

the amount of said first certificate with interest thereon to the date of said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of purchase and draw interest at the rate specified in said first certificate but not to exceed ten percent per annum from the date of payment. Said holder of a certificate of purchase permitting a subsequent certificate to issue on the same property, shall, on notice from the county collector, surrender said certificate of purchase on payment to him of the redemption money paid by the subsequent purchaser."

The Supreme Court in defining the rights of a certificate holder under an old Missouri statute, somewhat similar to the above statute in *Hilton vs. Smith*, 33 S. W. 464, 134 Mo. 499 l. c. 509, said:

"At the time the back-tax suit was commenced, interpleader Smith held certificates of the purchase of the land at collector's sales for taxes levied for the years 1874 and 1875. The time allowed by the law (2 Wag. St. p. 1202, Sec. 208), in which the owner could redeem, had expired, and he was, and for some time had been, entitled to a deed. What title to, interest in, or lien upon land, a certificate of purchase secures to the holder is a question upon which there is a difference of opinion. It may be said, generally, that the right is no larger than the statute gives. The law of 1872

only gives the right to the redemption money in case the land is redeemed, and to a deed when the time of redemption has expired. In the absence of provisions of law defining the rights of the holder of a certificate of purchase, the generally accepted rule is that until the delivery of a deed he takes no title to the land, either legal or equitable. Black, Tax Titles, Sec. 322; Burroughs, Tax'n 321. The rule is announced by this court in Donohoe vs. Veal, 19 Mo. 336, as follows: 'If the law did not propose to give the purchaser title to the land until two years should elapse from the time of the purchase, then it did mean that the title should remain in the owner for that period; and the right of the purchaser was to receive his money, with high penal interest, during the delay of redemption. It appears very clearly the design of the two acts that the title to the property sold for taxes shall remain undisturbed until the deed is actually executed by the register, and that until that act is performed the title is in the former owner.' It was further held in that case that the doctrine of relation did not apply to such sales, and the title acquired under the deed did not relate back to any prior act or proceeding. The law of 1857 made the certificate prima facie evidence of title, yet the court held that it never intended to confer title, but was mere evidence of title, authorizing the purchaser to take possession of the premises for a limited period. Clarkson v. Creely, 40 Mo. 114. In Parsons vs. Viets, 96 Mo. 413, 9 S. W. 918, this court, in considering the rights of one holding a certificate acquired under a sale made pursuant

to the laws of 1872, held that he acquired thereunder no right to the possession of the premises, and in taking possession he was a trespasser and disseisor. After the period allowed for redemption has expired, as was the case here, the holder of the certificate has a mere naked right to demand and receive a deed from the collector. The law thereafter gives him no lien upon the land for any sum, except, in case his title fails, he may secure a lien under 2 Wag. St. p. 1206, Sec. 219. Pitkin vs. Reibel, 104 Mo. 511, 16 S. W. 244."

The first purchaser, by permitting a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property included in his certificate, forfeited his rights of priority thereunder to the subsequent purchaser and when such subsequent purchaser deposited with the County Collector the amount of said first certificate with interest thereon to the date of the issuance of said second certificate, such acts fully met the requirements of the statute. The first certificate was thereby redeemed and not even a mere naked right existed thereunder.

The only outstanding right against the land, subsequent to the above procedure, was that existing under and by virtue of the 1936 or second certificate and the limitation provided in Section 9957, supra, began to run beginning with said second sale.

CONCLUSION

Therefore, it is the opinion of this department that the holder of a certificate issued by the Collector upon the sale of lands under Senate Bill 94 of the 1933 Session Acts, suffering a subsequent tax to become delinquent and

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a sale therefor, forfeits his rights of priority thereunder. That upon the payment of such second certificate holder, to the Collector, of the amount of the first certificate and interest up to the time of the issuance of said second certificate, the first certificate and all rights thereunder are redeemed. Therefore limitation of redemption begins to run from the date of issuance of the second certificate to-wit, that of 1936.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting Attorney-General

SVM:LB