

TAXATION:
SALE OF LANDS FOR
DELINQUENT TAXES:
COLLECTOR'S DUTIES:

Collector is not authorized to issue certificate of purchase at sale of lands sold for delinquent taxes until the amount of the bid is paid him.

October 26, 1939

Honorable I. T. Bode
Director
State Park Board
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit the following questions:

"1. In the event the county collector is willing, may we lawfully purchase land sold for delinquent taxes and later clear a check in payment to the county, in due course?"

"2. In the event the county collector is unwilling, may we buy this land in spite of the attitude of the county collector and oblige the county collector to wait for payment until we can issue a check in due course?"

It is the general rule of law that a county officer must look to the statutes under which he performs his official duties for his powers and duties. In the absence of a statute authorizing such officer to perform certain acts, then he is not authorized to perform them.

In the first question which you have presented you submit a case in which a county collector is willing to give the bidder time to pay for lands which have been sold for delinquent taxes. We think the duties of the collector in respect to the sale and collection of the purchase price and the issuance of a certificate of title to lands sold for taxes are set out in Sections 9953c and 9953d, page 433, Laws of Missouri, 1933, under what is known as the Jones-Munger Act. Section 9953c provides as follows:

"Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the collector, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises as to the proper person, the same shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto. In case the purchaser fails to pay his bid, the land shall be again forthwith offered for sale the same as if no sale had been made, and the purchaser so failing shall forfeit and pay for the use of the distributive county school fund of the county a penalty of twenty-five per cent of the amount of his bid, to be recovered by action of debt in the name of the collector, before any justice of the peace, or court having jurisdiction, and the prosecuting attorney shall conduct such suit, and for his services a fee of five dollars shall be taxed against such delinquent purchaser."

It will be noted that this section requires the purchaser to immediately pay the amount of his bid to the collector. It also provides that a penalty shall be imposed upon the purchaser in case he does not pay the amount of his bid at that time, and requires the collector to again forthwith offer the lands for sale.

Referring to Section 9953d, it provides in part as follows:

"After payment shall have been made the county collector shall give the purchaser a certificate in writing, to be designated as a certificate of purchase, which shall carry a numerical number and which shall describe the land so purchased, each tract or lot separately stated, the total amount of the tax, with penalty, interest and costs, and the year or years of delinquency for which said lands or lots were sold,

separately stated, and the aggregate of all such taxes, penalty, interest and costs, and the sum bid on each tract.
* * *

It will be noted from this section that the lawmakers again provided that the certificate of purchase should not be issued until the bidder has paid the amount offered for the delinquent lands.

The collector is charged with the collection of these taxes and is liable on his bond to the county court for such taxes on the report that such taxes are uncollected; so if the collector were to report a sale of the lands without reporting the amount having been collected thereon, he would be liable on his bond for same. If the collector is willing to assume that responsibility, then we do not see where there would be any prohibition to such an act. If the collector is unwilling to permit the purchaser to pay for the lands after the date of the sale, then under the foregoing statutes there is no way to force him to await payment.

CONCLUSION

From the foregoing, it is the opinion of this department that it is the duty of the county collector when he sells lands for delinquent taxes to immediately collect from the bidder the amount offered for such lands, and that he is not authorized to issue a certificate of purchase to the bidder until the amount bid therefor has been paid to the collector.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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