

STATE CONSERVATION COMMISSION: Not liable for back taxes on property purchased for use of state.

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Honorable I. T. Bode, Director
State Conservation Commission
Jefferson City, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated September 9, 1939, which is in part as follows:

"Is it lawful for the Conservation Commission to use Conservation Commission funds for the payment of property taxes? Can the payment of these property taxes be considered to be a delayed consideration or delayed part of the original purchase price? In this particular case it appears that the land was purchased by the State several years ago and that the deeds were not recorded until January, 1938.

The county officials in Reynolds County agree that 1938 taxes are not a lien against this land but take the position that taxes levied prior to January, 1938, are a lien against the land.

In summary, the particular opinion requested in this particular case is, does the Conservation Commission have authority under State law to use its funds for any payment of property taxes?"

The Conservation Commission was determined to be a branch of the sovereign power in the case of Marsh v. Bartlett, 121 S. W. (2d) 1. c. 744. It becomes necessary to determine, therefore, whether or not it is necessary for the Conservation Commission to pay taxes assessed against and which have become a lien on property acquired by the Commission. We find no case in Missouri bearing

exactly on this question, but a reference to the cases in other jurisdictions discloses that the question has frequently arisen. In *Turley v. St. Francis County (Ark.)*, 287 S. W. 196, the question arose as to the effect of purchase by the state of property against which there was a special tax lien. We find the following in the opinion of the court:

"Of course, the forfeiture to the state of lands for general taxes necessarily suspends the enforcement of the special tax lien as long as the title remains in the state, but as the lien, under the terms of the statute, is not extinguished, and continues until the special taxes are paid, the same can be enforced when the land goes back into private ownership. This construction of the statute gives full recognition to the state's paramount right of taxation, and in no wise detracts from the dignity and power of the state as against subordinate governmental agencies."

In the case of *State of New Mexico v. Seon Locke*, 30 A. L. R. 407, there was a determination of the exact question at hand. In that case the New Mexico Reform School, which was a branch of the executive power of the state, purchased land against which there was a lien for taxes. Subsequently, the collector sold the land for taxes and made a tax deed. The state brought suit for cancelation of said tax deed and to restrain the collector from taking any further action. The court, in deciding that the purchase by the state freed the land from all tax liens, stated:

"And we think these unanswerable reasons for exempting the property of the state from the levy of taxes thereon lead to the conclusion that when property is acquired by the state in its sovereign capacity, it thereupon becomes absolved, freed, and relieved from any further liability for taxes previously assessed against it, and which are unpaid at the time it becomes so acquired; that, from the moment of its acquisition, the power to enforce the lien is arrested

or abated. The claim of the state for such taxes becomes merged in its ownership of the fee. To consider it further burdened with such lien, and to permit it to be subsequently sold for the payment thereof, results in the state selling its own property to pay itself.

All that is necessary to decide, and all that we do decide, is that all proceedings to assess the land for taxes, taken after it became public property, and all proceedings in attempting to enforce and collect the tax, were void. This decision is the only one that will prevent the disastrous result of property devoted to a public use being, through the carelessness of public officials lost to the public on tax judgments and sales, and is, we think, in entire accord with the settled policy of the state that public property shall not be subject to taxation, or to the laws in regard to proceedings to enforce the collection of taxes.'

'In the case of a municipality, a governmental agency of the state, and itself maintained by taxation, and presumed by law to be exempt from taxation, it cannot be supposed that the legislature intended that any further steps should be taken looking to the enforcement of the state's lien for taxes against property acquired by one of its own governmental agents, after the property is purchased by such agent. Such proceedings would not aid the effectuation of any governmental purpose, but would impair it. After the municipality purchased this lot, the taxing officers could not take any further steps looking to the collection of the tax, and the subsequent sale of the land for the taxes was a nullity. The purchaser at the sale got no title, because it was beyond the power of the officers to sell.'

The property in question was freed and absolved from further liability for the taxes previously assessed against it, the moment it was acquired by the state. Prior to that time, the state merely held a lien against such property to secure the unpaid taxes so previously assessed, and this lien was merged into the ownership of the title in fee. That a lien, whether it be created by mortgage or otherwise, is merged into the title of the holder thereof the moment he acquires the fee to the property covered by such lien, is a proposition of law too well settled to merit the citation of authority."

We find the same rule expressed in *Laurel v. Weems*, 100 Miss. 335, 56 So. 451, *Flannagan v. Land Development Company*, 145 La. 843, 83 So. 39, and other jurisdictions. The principle set out in the *Locke* case, *supra*, that there is a merger which extinguishes the debt when the owner of a mortgage acquires the equity of redemption, has been followed in Missouri. *Wonderly v. Giessler*, 93 S. W. 1130.

Article X, Section 6, of the Missouri Constitution exempts the real and personal property of the state, counties and other municipal corporations from taxation.

CONCLUSION.

In view of the foregoing authorities, it is our opinion that the State Conservation Commission is not chargeable with the taxes assessed against and which have become a lien on property acquired by such commission since the lien is extinguished when the property is acquired and no further taxes are assessable against this branch of the sovereign power.

Respectfully submitted,

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APPROVED:

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