

TAXATION AND: County Courts may only compromise back taxes  
REVENUE : under the provisions of Section 9950. When  
lands are sold and the description is im-  
perfect the sale is not valid but the tax  
lien is transferred to the grantee. Right  
of such lienholder.

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October 18, 1939.

10-28

FILED  
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Mr. Paul J. Clay  
Clerk of the County Court  
St. Francois County  
Farmington, Missouri

Dear Mr. Clay:

We desire to acknowledge your request for an opinion on October 17, 1939, which is as follows:

"The following problem concerning the abatement of taxes has arisen in our County. The property is described as follows; 49 acres, SW Pt. SE Fr.  $\frac{1}{4}$ , 7-36-6. The property has been advertised for tax sale for a total amount of \$71.19. This is the first sale. The owners of the property have called upon the Court and ask them to reduce the taxes. The Owners have offered to compromise the taxes with the Court for 50% of the charge against the property. By their representative, they state that the property is inadequately and insufficiently described.

"The assessment is \$600.00. It is the opinion of the Collector that this is a very reasonable assessment. Others who are acquainted with the value of the land say that it is worth much more than the assessed valuation. We have searched the map of the County and find that the land can be designated or

located from the description given on the tax records.

"Under 'Laws of Missouri 1933', Section 9958b, captioned 'When Sale Shall Not Be Valid', we reads as follows: 'or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty', We determine, therefore, that it is not necessary for the description set out on the tax records to be exactly as is set out in the deed.

"The Court wishes to treat the persons concerned in this matter fairly, however they do not feel that they have a complete and just cause for asking for an abatement. They will withhold the tax abatement order pending an opinion from your office, covering the above."

I.

A county court, in compromising back taxes, obtains its authority under and by virtue of Section 9950, Laws of Missouri 1933, at page 427, which provides, in part, as follows:

"Whenever it shall appear to any county court, or if in such cities the register, city clerk or other proper officer, that any tract of land or town lot contained in said 'back tax book' or recorded list of delinquent land and lots in the collector's office is not worth the amount of taxes, interest and cost due thereon, as charged in said 'back tax book' or recorded list of delinquent land and lots in the collector's office, or that the same would not sell for the amount of such taxes, interest and cost,

it shall be lawful for the said court, or if in such cities the register, city clerk or other proper officer, to compromise said taxes with the owner of said tract or lot, and upon payment to the collector of the amount agreed upon, a certificate of redemption shall be issued under the seal of the court or other proper officer, which shall have the effect to release said lands from the lien of the state and all taxes due thereon, as charged on said 'back tax book' \* \* \* " (Underscoring ours)

Under the provisions of Section 9950, supra, a county court may only compromise back taxes:

"when it shall appear to the county court \* \* \* that any tract of land \* \* \* contained in said 'back tax book' \* \* \* is not worth the amount of the taxes \* \* \* or that the same would not sell for the amount of such taxes \* \* \* "

In an opinion rendered by this department to Honorable D. M. Githens, Presiding Judge of County Court, Poplar Bluff, Missouri on September 8, 1939, a copy of which is enclosed herein, this department held that a county court may compromise taxes on lands, under the provisions of said Section 9950, at any time before they are sold at a third sale. However, the question was not passed on as to said Section 9950 being the only statutory provision for such court to compromise delinquent taxes.

#### CONCLUSION

Therefore, it is the opinion of this department that the county court may only compromise back taxes when it shall appear to such court that the lands and lots are not worth the amount of taxes, interest and costs due thereon, as charged in the back tax book or recorded list

of delinquent land in the collector's office or that the same would not sell for the amount of such taxes, interest and costs.

II.

Section 9952a, Laws of Missouri 1933, at page 430, is, in part, as follows:

" \* \* \* 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."

Section 9958b thereof, at page 441, is as follows:

"No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and for the first two enumerated causes, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the county court." (Underscoring ours)

Section 9958c, is as follows:

"If any conveyance for taxes shall prove to be invalid and ineffectual to convey title because the description is insufficient, or for any other cause than the

first two enumerated in the preceding section, the lien which the state has on such lands shall be transferred to and vested in the grantee, his heirs and assigns, who shall be entitled to a lien on such land for the amount of taxes, interest and penalty, legally due thereon at the time of such sale, with interest, together with the amount of all subsequent taxes paid, with interest, and such lands shall be bound for the payment thereof." (Underscoring ours)

Section 9958d is, in part, as follows:

"Every person holding a lien upon any real estate in this state by virtue of any illegal or invalid tax deed, shall, upon the payment or tender to him by the owner or any person having an interest in such real estate, of the full amount of said lien, together with the sum of one dollar and twenty-five cents, and together with any sum that may be due him as an occupying claimant, make, execute and acknowledge before some officer authorized to take acknowledgment of deeds, and deliver to the person making such payment or tender a deed of release, releasing to the owner of such real estate all claims the holder of such invalid tax deed has on such real estate on account of such tax deed; \* \* \* "

Section 9960 thereof, is as follows:

"The sale of lands for taxes shall not be invalid on account of such lands having been listed or charged on the tax book in any other name than that of the rightful owner."

Section 9962e is, in part, as follows:

"Any person holding any deed of lands or lots executed by the county collector for the non-payment of taxes, may commence a suit in the circuit court of the county where such lands lie, to quiet his title thereto, without taking possession of such lands, \* \* \*. The court shall examine into the facts, and if upon the hearing of such cause it shall appear that the complainant's title was or is invalid for any cause, such suit shall not be dismissed by the court, but the court, in cases where the tax was due and unpaid, or where the complainant's title was invalid for defect or uncertainty of description shall ascertain the amount due the complainant, for principal and interest, to be computed at not to exceed ten per cent per annum, and from whom due, and shall decree the payment thereof within a reasonable time by the owner of such land, the owner of any life estate therein, or any other person in possession as lessee thereof and owing such sum ascertained, and in default thereof shall direct that such leasehold, life estate and land or lot be sold therefor, and that the equity and right of redemption of all defendants in such suit, and all persons claiming under them shall be forever foreclosed. \* \* \* "

Section 9962d is, in part, as follows:

"If any conveyance made by the county collector, pursuant to a sale for non-payment of taxes, under this or any former tax law, shall prove to be invalid and ineffectual to convey title

for any other cause than such as are enumerated in section 9960b the lien which the state had on such land for state, county, township, school and all lawful purposes, together with all lawful charges, shall remain in full force, and shall be transferred by such deed to the grantee and vested in him, his heirs and assigns, who shall be entitled to a lien upon such lands, and the same shall be bound for the final payment thereof; and in case judgment be rendered against the person holding the title from the collector, as aforesaid, for the recovery of such land, in an action of ejectment or other action, either at law or in equity, brought by the owners of such lands, heirs or assigns, the court shall ascertain the amount due to the party holding such tax deed and from whom due for principal and interest and for all improvements made by him on such lands including subsequent taxes paid with interest, and shall decree the payment thereof within such reasonable time by the owner of such land; \* \* \* "

Under the provisions of Section 9952a, supra, "the entry of record by the County Collector" listing delinquent lands becomes a levy for the purpose of enforcing the states lien for taxes.

Section 9958b, supra, providing when a sale shall not be valid states three conditions under which such invalidity exists. The third ground is that of imperfect description of the land.

Section 9958c, supra, provides that an invalid sale for taxes - the invalidity resulting from imperfect description - transfers the states lien for taxes, which is provided in Section 9952a, supra, to the grantee.

Section 9958d, supra, provides that when the owner or interested party in real estate pays to the holder of the transferred lien, referred to in the preceding paragraph, the full amount of such lien and other items men-

tioned therein, the lienholder must release his interest in and to such lien to such party.

Section 9962c, supra, provides that the holder of a tax deed to land may bring a suit to quiet title and if the court finds that plaintiff's deed is invalid for any cause

"such suit shall not be dismissed by the court, but the court, in cases where \* \* \* the complainant's title was invalid for defect or uncertainty of description shall ascertain the amount due the complainant \* \* \* "

unless the same is paid the court shall order a sale to pay the same.

Section 9962d, supra, provides that when the conveyance made by the collector is invalid and ineffectual to convey title "for any other cause than such as are enumerated in Section 9960b" the lien of the state for taxes shall be transferred, by the conveyance of the collector, to the grantee and in case of an action in ejectment or other legal or equitable remedy in behalf of the owner and judgment is obtained thereunder the court shall ascertain the amount due to the party holding the tax deed, for all improvements and payments on subsequent taxes and provide for the payment thereof.

#### CONCLUSION

Therefore, it is the opinion of this department that in event lands levied on for delinquent taxes as provided in Section 9952a, supra, are imperfectly described it is the duty of the collector to seal such lands.

Mr. Paul J. Clay

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October 18, 1939.

When lands are sold for delinquent taxes and the description is imperfect, the sale is not valid but the tax lien is transferred to the grantee and he may enforce his rights under the above statutes.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney-General

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