

TAXATION:  
COMPROMISING TAXES DUTY OF  
THE COLLECTOR TO START PRO-  
CEEDINGS TO SELL:

The county court may compromise taxes as provided by Section 9950, Laws of Mo. 1933, page 426, at any time before they are sold at the third sale. It is the duty of the collector to institute proceedings pertaining to the sale of lands for taxes.

September 8, 1939

Honorable D. M. Githens  
Presiding Judge of the  
Butler County Court  
Poplar Bluff, Missouri

Dear Sir:

This is in reply to yours of the 5th wherein you submit two questions. First, has the county court or the collector, or either of them, authority to compromise and collect taxes on property after the third sale by the collector? Second, whose duty is it to file a suit on delinquent taxes, the collector, the county court or the tax attorney?

I.

On the first question submitted as to whether or not the county court or the collector can compromise and collect taxes on property after the third sale, we find that Section 9950, Laws of Missouri, 1933, page 426, is the section of the law which is applicable to this question. This section provides 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' or recorded list of delinquent land and lots in the collector's office; and in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot."

It will be noted from this section that the county court is the only body which is authorized to compromise taxes. In connection with this question you also stated that you do not understand Section 9956a. Section 9956a, Laws of Missouri, 1933, page 437, is as follows:

"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 per centum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption. 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, his heirs or assigns, at the last postoffice address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redeemer after that time."

This section only pertains to the redemption of lands which have been sold for taxes. Since the full amount of taxes, costs and charges must be paid before the land can be redeemed when sold under Section 9965a, supra, we do not think that the compromise section, referred to above, applies to the provisions of this section. By Senate Bill 311, passed by the Sixtieth General Assembly, it is provided that at the third sale

the delinquent lands shall be sold for whatever the bid is. After this sale, no redemption provisions are provided and we do not think that the provisions of Section 9956a, supra, would apply. The following provisions of Section 9953a of said Senate Bill 311 pertain to the third sale by the collector:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell same to the highest bidder, and there shall be no period of redemption from such sales. No certificate of purchase shall issue as to such sales but the purchaser at such sales shall be entitled to the immediate issuance and delivery of a collector's deed. \* \* \* \* \*

However, if the lands do not sell at the third sale, then the provisions of said Section 9950 in the compromise provisions will still apply and the county court may compromise such taxes on the terms set forth in said section.

CONCLUSION.

From the foregoing it is the opinion of this department that the county court only is authorized to compromise taxes. Such court is not authorized to compromise such taxes if the lands have been sold and the collector's deed executed and delivered as is provided by the foregoing Senate Bill 311. However, if the lands are not sold at the third sale, we think that the county court still has the authority to compromise such taxes as is provided by said Section 9950.

## II.

In your second question you inquire as to whose duty it is to file suit for delinquent taxes, the county collector, county court or the tax attorney.

If you will refer to the Jones-Munger Act of 1933, which provides for the sale of delinquent property for taxes, you will note that there are no provisions for the filing of a suit for the sale of lands for delinquent taxes on real estate. By Section 9952b, Laws of Missouri, 1935, at page 403, you will find that the duties of the county collector, pertaining to the sale of lands which have been returned as delinquent, are set out. This section provides in part as follows:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. And it shall only be necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost due thereon, each year separately stated, and the land therein described shall be described in forty-acre tracts or other legal subdivision, and the lots shall be described by number, block, addition, etc.; provided, however, that if a part or parts of any forty-acre tract or other legal subdivision or lot is assessed on the tax books to two or more parties as owners thereof, then, as to such land or lots, such list shall be so prepared and separated. To such list shall be attached and in like manner so printed and published a notice that so much of said lands

and lots as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of sale will be sold at public auction at the courthouse door of such county, on the first Monday in November next thereafter, commencing at ten o'clock of said day and continuing from day to day thereafter until all are offered. The county collector shall, on or before the day of sale, insert at the foot of such list on his record a copy of such notice and certify on said record immediately following such notice the name of the newspaper of the county in which such notice was printed and published and the dates of insertions of such notice in such newspaper. \* \* \* \* \*

Throughout this entire Jones-Munger Act it appears that the lawmakers have imposed upon the collector, and him only, the duty of selling delinquent lands for taxes. If the delinquent taxes are on personal property, then the provisions for the sale of such taxes are provided for by Section 9940, R. S. Missouri, 1929, which provides in part as follows:

"Personal taxes assessed on and after June 1st, 1887, shall constitute a debt for which a personal judgment may be recovered before a justice of the peace or in the circuit courts of this state against the party assessed with said taxes. All actions commenced under this law shall be prosecuted in the name of the state of Missouri, at the relation and to the use of the collector and against the person or persons named in the tax bill, and in one petition and in one count thereof may be included the said taxes for all such years as may be delinquent and unpaid, and said taxes shall be set forth in a tax bill or bills of said personal back taxes

duly authenticated by the certificate of the collector and filed with the petition; and said tax bill or tax bills so certified shall be prima facie evidence that the amount claimed in said suit is just and correct, and all notices and process in suits under this law shall be sued and served in the same manner as in civil actions before justices of the peace and in circuit courts, and the general laws of this state as to practice and proceedings and appeals and writs of error in civil cases shall apply, as far as applicable, to the above actions. Said actions shall be prosecuted by attorneys employed as provided in article 9 of this chapter of the general statutes, and the fees and compensation allowed in said article shall apply to the above actions:  
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CONCLUSION

From the foregoing it is the opinion of this department that there is no provision for a suit to be filed for delinquent taxes on real estate under the Jones-Munger Act.

We are further of the opinion that actions for the sale of personal property shall be instituted by the collector and prosecuted by the attorney appointed as tax attorney, and that the county court has no duties to perform in connection with the suit or the filing of it for the collection of personal property taxes.

Respectfully submitted

APPROVED:

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