

TAXATION AND: Construction of Senate Bill No. 311 in relation  
REVENUE ; to Senate Bill No. 94 as to the first, second  
and third sale and the resale provided in Section 9953b of said Senate Bill No. 94, the powers of the trustee and the rights and duties of junior lienors.

---

October 12, 1939.

Mr. R. L. Jones  
County Court Clerk  
New Madrid, Missouri

10-14



Dear Mr. Jones:

On October 9, 1939 we received a letter from you requesting an opinion on matters relating to Senate Bill No. 94, known as the Jones-Munger Law and a construction of Senate Bill No. 311 of the 60th General Assembly in relation to said Senate Bill No. 94, which is as follows:

"We desire to have your opinion as to secondary liens on lands being sold for delinquent taxes. Does the present Jones-Munger law clear or knock out all deeds of trust, mortgages, school fund loans, and special improvement liens, if any, under the first or second offering, third offering, or fourth offering, if any. We presume that they have a right to redeem the land on the first or second offering, but are worried about the third and fourth offering. The third offering, as it now stands sells the land without any redemption and we want to know what effect this has on secondary liens, as above mentioned. Also our collector in offering redeemed land at a fourth offering this year, includes the 1938 taxes on the land. The drainage district would not have sufficient time to file a suit and sell for their lien before he sells the land. Would this fourth offering wipe out the drainage lien for those years, as well as all other secondary liens?"

"Then if all of these offerings wipe out secondary liens, and they only have a chance to redeem on the first and second offerings, would, in your opinion, the drainage districts organized under the County Court have authority to bid at sales under the Jones-Munger to protect their liens on the land? This would come up in case they had failed to file suit, obtain a judgment and dispose of the land prior to the third offering, and if they would have authority to purchase such lands, would they have authority to purchase at either of the offerings?"

"The third question relates to Section 9953b, Laws of Missouri, 1939. Would the trustee appointed by the County Court have authority to make a bid of the taxes, costs, interest and penalties at the first or second offering, or must he wait and bid only at the third offerings? It would seem to us that if he had authority to purchase at the third offering the total amount of taxes and etc., due, that he should have the same right to purchase at either the first or second offering, and save the necessary expense of the two additional advertisements, which is in itself a large item.

"We would appreciate your opinion as soon as possible so that we may be able to govern ourself accordingly on the first Monday in November."

Section 9952a, 9952b and 9952c of Senate Bill No. 94, Laws of Missouri 1935, provide for the publication and sale of lands for delinquent taxes. In event there is no bid of a sum equal to the delinquent taxes thereon with interest, penalty and costs, such lands shall not be sold

but must be reoffered for sale the following year. If at such reoffering no person shall bid a sum for such lands equal to the delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact upon his record of sale and the county collector shall enter a recital of such fact in his record book containing the list of delinquent lands and lots.

Section 9953a of said Senate Bill No. 94, is as follows:

"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 the same to the highest bidder, and the purchaser thereof shall acquire thereby the same interest therein as is acquired by purchasers of other lands at such delinquent tax sales."

Section 9953b, is as follows:

"Such lands may be redeemed from such sale upon the same terms and conditions as other lands may be redeemed from delinquent tax sales, as provided herein; but in the event of the redemption of any land from any sale made under the provisions of this act, the land so redeemed shall be liable to resale by such county collector at the next or any subsequent tax sale of lands for delinquent taxes for all delinquent taxes, penalty, interest and costs not paid by such sale."

Section 9956a is, in part, 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, \* \* \* \*"

Section 9953a of Senate Bill No. 311, Laws of Missouri 1939, at page 51, is as follows:

"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. If any lands or lots are not sold at such third offering, then the Collector, in his discretion, need

not again advertise or offer such lands or lots for sale oftener than once every five years after the third offering of such lands or lots, and such offering shall toll the operation of any applicable statute of limitations. A purchaser at any sale subsequent to the third offering of any land or lots shall be entitled to the immediate issuance and delivery of a collector's deed and there shall be no period of redemption from such sales; provided, however, before any purchaser at a sale to which this section is applicable shall be entitled to a collector's deed it shall be the duty of the collector to demand, and the purchaser to pay, in addition to his bid, all taxes due and unpaid on such lands or lots that became due and payable on such lands or lots subsequent to the date of the taxes included in such advertisement and sale.

"In the event the real purchaser at any sale to which this section is applicable shall be the owner of the lands or lots purchased, or shall be obligated to pay the taxes for the non-payment of which such lands or lots were sold, then no collector's deed shall issue to such purchaser, or to anyone acting for or on behalf of such purchaser, without payment to the collector of such additional amount as will discharge in full all delinquent taxes, penalty, interest and costs." (Underscoring ours)

Section 9953b, thereof, is, in part, as follows:

"It shall be lawful for the County Court of any County, and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis,

to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which Section 9953a is applicable, and to purchase at such sales all lands or lots necessary to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids. Such person or persons so designated are hereby declared as to such purchases and as title holders pursuant to collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold. \* \* \* "

Section 9953f is, in part, as follows:

"Any drainage, levee or any other special improvement district having a lien on any land or lot, upon which there has been issued a certificate of purchase, may, if authorized by the law creating such drainage, levee or other special improvement district, at any time within the period of redemption applicable to any certificate of purchase, deposit with the collector the amount necessary to redeem such lands. \* \* \* "

(Underscoring ours)

Section 15, Article II of the Constitution of Missouri, is as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the General Assembly."

Notices of sale of lands and lots for delinquent taxes have been or will be given under the provisions of Section 9952b, supra.

The first matter to determine is whether Section 9953a, supra, operates retrospectively, within the terms of the Constitution. The words "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", clearly indicate that the legislature intended the above - which is an amendment of Senate Bill No. 94 - to operate retrospectively.

The rule in Missouri is that a law is not retrospective in its operation, within the terms of the Constitution, unless it impairs some vested right.

The court has defined vested rights in the case of State ex rel. vs. Hackman, 272 Mo. 600, 607, as follows:

" \* \* \* By a vested right we mean one which is absolute, complete and unconditional (Orthwein v. Insurance Co., 261 Mo. l. c. 665), to the exercise of which no obstacle exists and which is immediate and perfect in itself and not dependent upon a contingency. (Young v. Jones, 180 Ill. l. c. 221; Bailey v. Railroad, 4 Harr. (Del.) l. c. 400; Day v. Madden, 9 Colo. App. 464; Royston v. Miller, 76 Fed. l. c. 53.) \* \* \* "

The Supreme Court of Arkansas, in the case of Matthews vs. Bailey, 131 S. W. (2nd) 423, 428, gave the following definition of a vested interest:

" \* \* \* 'A vested right "must be something more than a mere expectation based upon the anticipated continuance of existing laws. It must have become a title \* \* \* to the present or future

enjoyment of property," in some way or another. \* \* \* But parties have no vested rights in remedies or matters of procedure.' It is also well settled that no one has a vested right in a public law. *Roberson v. Roberson*, 193 Ark. 669, 101 S. W. 2d 961."

A statute which is remedial or procedural, and especially one providing for the enforcement of the lien of county and state for delinquent taxes on real estate already assessed and levied, may be retroactive and not come within the above constitutional inhibition.

In construing this question, the Supreme Court in *McManus vs. Park*, 287 Mo. 1. c. 115, says:

" \* \* \* This, however, applies only to statutes which would affect vested rights, and not to statutes which are remedial only. No one has a vested interest in the form of procedure; no one has a vested right to have his cause tried by any particular mode. (*Schuermann v. Union Cent. Life Ins. Co.*, 165 Mo. 1. c. 652; *Roenfeldt v. St. L. & Sub. Ry. Co.*, 180 Mo. 1. c. 564; *State v. Taylor*, 134 Mo. 1. c. 144-145; *State ex rel. v. Taylor*, 224 Mo. 1. c. 464; *St. Louis v. Calhoun*, 222 Mo. 1. c. 52.)

"This court said in case of *Mainwaring v. Lumber Co.*, 200 Mo. 1. c. 732-733:

"'Acts changing remedies in any way that do not destroy or impair vested rights, are excluded from the rule invalidating retrospective laws, even when they are intended to retroact.'"

In the course of said opinion, the court further said:

" \* \* \* A statute may retroact without being retrospective in the sense that it is inimical to the Constitution. So far as remedies are concerned, it may operate upon property rights and interests which are already vested, but the remedial action authorized by the statute of course applies to the future. It has been many times held by this court that a statute is not retrospective in its operation, within the terms of the Constitution, unless it impairs some vested right.  
\* \* \* "

Also:

"This, because the retrospective laws forbidden by that instrument are laws impairing existing vested civil rights. The law must take away such vested right, or it must create a new obligation, impose a new duty, or attach a new disability in respect to gone-by transactions, in order to be retrospective and under the constitutional ban. There is no vested right in a particular mode of procedure."

"The amplification of the principle in the last sentence of the first paragraph quoted, only particularizes what is meant by existing vested rights. A law which does not impair any vested right is not retrospective in the constitutional sense, although it may change the remedy or provide new remedies for enforcing or defining such a right.\* \* \* "

Sales of lands and lots to be held November 6, 1939 and thereafter, will be held under notices given prior to the date that Senate Bill No. 311, supra, becomes effective, but the sales thereunder will be had after the date that Senate Bill No. 311 becomes effective. Said Senate Bill No. 311 amended Section 9953a and 9953b of Senate Bill No. 94.

The question arises as to whether a third sale on November 6th and thereafter will be governed by the provisions of Senate Bill No. 94 or Senate Bill No. 311.

On this question the court, en banc, in the case of *Brown vs. Marshall*, 241 Mo. 1. c. 727, 728, says:

"Clearly there was nothing inconsistent between section 9 of the Act of 1855, and section 7 of the Act of 1877, both of which have been previously quoted. Each in express terms and almost in the same language authorize the various probate courts of the State, by order, to change the stated terms thereof, to such times as the judges thereof may deem best and most convenient for the transaction of the business therein.

"But independent of that, there is another sound rule of statutory construction which governs this case, and that is, a subsequent act of the Legislature repealing and reenacting, at the same time, a pre-existing statute, is but a continuation of the latter, and the law dates from the passage of the first statute and not the latter. (*State ex rel. v. Mason*, 153 Mo. 23, 1. c. 58-59; *State ex rel. v. County Court*, 53 Mo. 128, 1. c. 129-130; *Smith v. People*, 47 N. Y. 330.)"

In the case of *Smith vs. Dirckx*, 283 Mo. 1. c. 198 the court, in applying the above rule to an amendment of 1919

which undertook to assess an additional 1% upon that portion of the net income for the calendar year of 1919, which was received by the appellant prior to going into effect of said amendment, held that, it did create a new obligation or impose a new duty, but pointed out:

"However, this should not operate to prevent the collection of a tax not exceeding one-half of one percent for the period above mentioned. This for the reason that since the old law imposed a tax of one-half of one percent upon that portion of his income which appellant received prior to the taking effect of the 1919 amendment, that portion of the amended rate which did not exceed the old rate did not create a new obligation or impose a new duty. It therefore follows that a tax not to exceed one-half of one per cent may be collected under the amendment with reference to the net income received by appellant prior to the going into effect of the amendment, without violating the Constitution."

I.

REDEMPTION

Sections 9953a and 9953b, supra, were the only subdivisions of Senate Bill No. 94 that were repealed by Senate Bill No. 311, which will be in effect prior to the sales of lands and lots for delinquent taxes beginning on November 6th. Said Section 9953a, supra, provided for a third sale. Said Section 9953b, supra, provided for a deficiency or resale for all delinquent taxes, penalty, interest and costs not paid by such sale. This obviously could only refer to the third sale because lands and lots could not be sold at a first and second offering or sale unless a bid were made on the same in a sum equal to the delinquent taxes thereon, interest, penalty and costs.

Then sales can not be consummated under the above Sections because Senate Bill No. 311 becomes effective before the date set for such sales.

Senate Bill No. 311 makes the third sale, and a sale subsequent to the third offering in case sale is not made at the third offering, final by requiring the delivery of a deed by the collector. The bill, therefore, makes such sales final and nullifies the equity of redemption from the same of all parties interested including all junior lienors. There could then be no resale for the deficiency after such third or subsequent final sale under the provisions of Senate Bill No. 311 of the Laws of 1939 because such resale for a deficiency could be executed only after a third sale was had under the 1933 Act and a redemption therefrom, which will be repealed on the effective date of Senate Bill No. 311.

Redemption is further provided in Section 9956a in the 1933 Act, supra and, Senate Bill No. 311 repealing the equity of redemption as to the third and subsequent sale, leaves the right of two years redemption, under the provisions of said Section 9956a, available with reference to the first and second offerings or sales. The two years redemption as to such first and second offerings or sales is unaffected by Senate Bill No. 311 except that such redemption is limited in case of a third or subsequent sale thereunder.

## II.

Under the provisions of Senate Bill No. 94, any party in interest may redeem from or buy in at a tax sale but it is, of course, necessary that such party have such a legal status and entity or charter right that it may avail itself of such privilege.

In the case of *Drainage District v. Hetlage*, 102 S. W. (2nd) 709, the Springfield Court of Appeals in construing the right of a drainage district organized by the county court to bid in or redeem from a tax sale for general delinquent taxes on real estate, said:

"but no such power or authority is vested by said section in county court districts."

This is the only decision we find on this question and is conclusive until overruled.

The title to Section 9963f of Senate Bill No. 311, Laws of Missouri 1939, at page 852, would indicate that drainage districts would, thereunder, be given the right to redeem

lands sold at a tax sale but therein we find the following limitation:

"if authorized by the law creating such drainage, levee or other special improvement district."

Therefore, the status of such county and other drainage, levee and improvement districts is exactly the same after the effective date of Senate Bill No. 311 as before and the right of county drainage districts to redeem and bid in lands and lots from and at a tax sale for general taxes is still controlled by said decision.

### III.

The right of a trustee appointed by the county court to purchase lands at a general delinquent tax sale is purely statutory and he can exercise no more authority than is expressed or implied by the statute creating such right. Under the provisions of Section 9953b, Laws of Missouri 1939, such trustee shall have "authority to bid at all sales to which Section 9953a is applicable".

An examination of said Section 9953a shows that it refers to the sale of lands and lots for delinquent taxes at the third sale only:

"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,\* \* \*".

Therefore, the trustee can bid only at the third sale or subsequent sale thereto provided in the above section.

Mr. R. L. Jones

- 14 -

October 12, 1939.

Such trustee does not have authority to bid on such lands and lots at such sales, however, if any other person bids a sufficient amount to pay in full all delinquent, taxes, penalties, interest and costs and, when he buys, he takes the deed "for the benefit of all funds entitled to participate in the taxes".

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

---

W. J. BURKE  
(Acting) Attorney-General

SVM:LB