

TAXATION AND REVENUE : Certificate-holder at a third sale under the provisions of Senate Bill No. 94, Laws of Missouri 1933, is entitled to a deed and possession after the redemption period unless he fails to pay subsequent taxes and permits
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the property to be sold under the provisions of Section 9953a, Senate Bill No. 311, Laws of Missouri 1939, at page 851, and in such event he loses all rights obtained under the certificate of purchase.

Honorable Henry C. M. Lamkin
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Mr. Lamkin:

We desire to acknowledge your request for an opinion relating to the Jones-Munger law, on October 27, 1939, which is as follows:

"'A' purchased land as the highest bidder at a tax sale November, 1938. The said land was being offered for the third time.

QUESTION: Does Section 9953a, Page 851, Session Acts of the Legislature for 1939, apply so as to enable 'A' to secure title and possession now, or when would 'A' be entitled to possession and title?

"I would appreciate very much an opinion from your office in the above matter."

Section 9953a, Laws of Missouri 1933, page 432, 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 9956a thereof, 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, 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 percentum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, * * *"
(Underscoring ours)

Section 9957c thereof, is, in part, as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale

under which such holder makes demand for deed, and any purchaser that shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property included in his certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser, * * * ." (Underscoring ours)

The rights of certificate holders, obtained by sales consummated under the provisions of Sections 9952c and 9953, supra, are construed by the court in the case of Hilton vs. Smith, 33 S. W. 464, 465, 466 as follows:

"* * * In the absence of provisions of law defining the rights of the holder of a certificate of purchase, the generally accepted rule is that until the delivery of a deed he takes no title to the land, either legal or equitable. * * * After the period allowed for redemption has expired, as was the case here, the holder of the certificate has a mere naked right to demand and receive a deed from the collector."

A third sale to the highest bidder, under the provisions of Section 9953a, supra, entitled the purchaser to a certificate with the legal rights construed in the above decision, however subject to the redemption statute 9956a, supra. If such purchaser continued to pay the subsequent taxes accruing against said lands, after the issuance of his certificate, there could never be a third sale under the provisions of Section 9953a, Laws of Missouri 1939, at page 851.

In event such certificate-holder failed to pay the taxes accruing after the issuance of such certificate he "forfeited his rights of priority thereunder to the subsequent purchaser", as provided in Section 9957c, supra. And, if the land were

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offered at a third final sale, under the provisions of said Section 9953a, Laws of Missouri 1939, by failure of the certificate-holder, at a third sale under the 1933 law, to keep such subsequent taxes paid, such certificate-holder under the third sale executed under and by virtue of the 1933 law, would lose his rights obtained under the certificate.

A certificate-holder, under a third sale under the 1933 Jones-Munger law, in event he keeps up the payment of subsequent taxes, would, after the redemption period, be entitled to obtain his deed and possession immediately.

CONCLUSION

It is, therefore, the conclusion of this department that, a certificate-holder at a third sale under the provisions of Senate Bill No. 94, Laws of Missouri 1933, is entitled to a deed and possession after the redemption period unless he fails to pay subsequent taxes and permits the property to be sold under the provisions of Section 9953a, Senate Bill No. 311, Laws of Missouri 1939, at page 851, and in such event he loses all rights obtained under the certificate of purchase.

Very truly yours,

S. V. MEDLING
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

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