

STATUTORY CONSTRUCTION: Words "shall be lawful" in Section 9953b., Laws of Missouri, 1939, construed to be directory.

November 30, 1939

12-1

Hon. Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of November 27, 1939, which reads as follows:

"Our County Court failed to appoint a Trustee to purchase real estate sold for taxes as provided under Section 9953b at page 851, Laws of Missouri, 1939. The Collector desires me to inquire of you whether or not the failure of the County Court to appoint such Trustee in any way affects the sale or the title to property which he has conveyed to the purchasers at this sale."

Section 9953b page 851, Laws of Missouri, 1939, reads 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. Such person or persons so designated shall not be required to pay the amount bid on any such purchase but the collector's deed issuing on such purchase shall recite the delinquent taxes for which said lands or lots were sold, the amount due each respective taxing authority involved, and that the grantee in such deed or deeds holds title as trustee for the use and benefit of the fund or funds entitled to the payment of the taxes for which said lands or lots were sold. The costs of all collectors' deeds, the recording of same and the advertisement of such lands or lots, shall be paid out of the county treasury in the respective counties and such fund as may be designated therefor by the authorities of the City of St. Louis. All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustees upon order of the County Court of the respective counties and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis, and the proceeds of such sales shall be applied, first, to the payment of the costs incurred and advanced, and the balance shall be distributed pro rata to the funds entitled to receive the taxes on the lands or lots so disposed of. Upon appointment of any such person or persons to act as trustee as herein designated a certified copy of the order making such appointment shall be delivered to the Collector, and if such authority be revoked a certified copy of the revoking order shall also be delivered to the Collector. Compensation to trustees as herein designated shall be payable solely from proceeds derived from the sale of lands purchased by them as such trustees and shall be fixed by the authorities hereinbefore designated, but not in excess of ten percent (10%) of the price for which any such lands and lots are sold by the trustees. Provided further, that if at any such sale any person bid a sufficient amount to pay in full all delinquent taxes, penalties, interest

and costs, then the trustees herein designated shall be without authority to further bid on any such land or lots."

The problem presented is one of statutory construction. It is, namely, whether, under the foregoing act, it is mandatory on the County Court to appoint the trustee, or whether such action is merely discretionary with them. Note the use of the words "shall be lawful" in Section 9953b, Laws of Missouri, 1939, supra.

In 59 C. J. page 1086, it is said:

"* * * It is also a general rule that the word 'shall,' when used by the legislature in a grant of authority to a court, means 'may,' * * *"

Again in 59 C. J. at page 1087, it is said:

"The words 'it shall be lawful' are, according to their ordinary and natural meaning, permissive and enabling words only, * * *"

The court in State v. City of Maplewood, 99 S. W. (2d) 138, l. c. 142, paragraph 5, has said:

"The general rule with respect to the use of permissive words in a statute is stated in 59 C. J. section 633, pp. 1077 and 1078, as follows:

'On the other hand, where statutes are purely enabling in character, simply making that legal and possible which otherwise there would be no authority to do, and no public interests in private rights are involved, they will be construed as permissive. Generally, statutes, directing the mode of proceeding by public officers, designed to promote method, system, uniformity, and dispatch in such proceeding, will be regarded as directory if a disregard thereof will not injure the rights of parties, and the statute does not

declare what result shall follow noncompliance therewith. * * * "

More particularly, there is the decision in *People ex rel Comstock v. City of Syracuse*, 12 N. Y. Supp. 890, 894 in which the court holds:

"The words 'it shall be lawful' impart a discretion. It is only where the subject matter imperatively requires it that they can receive a different construction."

CONCLUSION

In view of the above authorities, it is the opinion of this Department that there is no absolute duty on the County Court, under Section 9953b, Laws of Missouri, 1939, to appoint a trustee, and such action on their part is simply discretionary. It follows that the validity of the sale by the County Collector, and the transfer of title to the purchaser, is not affected by failure of the County Court to appoint a trustee.

Respectfully submitted,

W. J. BURKE
Assistant Attorney-General

APPROVED:

TYRE W. BURTON
(Acting) Attorney-General

RPCW:RW