

TAXATION:  
SALE OF LAND TO TRUSTEE:  
THE TRUSTEE MAY NOT BE  
DEPUTY COUNTY COLLECTOR:

Deputy county collector may not act  
as trustee. Authority of the trustee  
to collect fees for service.

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November 17, 1939

11-20



Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

This is in reply to your request wherein you submit the question of whether or not a deputy collector may act as a trustee for the county court to purchase lands sold for delinquent back taxes by virtue of the provisions of Section 9953a, Laws of Missouri, 1939, page 851; and

Whether or not such deputy collector trustee can make a good title to lands so purchased; and

Whether or not such trustee would be permitted to collect the compensation authorized to be paid to trustees for such sales; and

Also, your letter of November 8th, which supplemented your first request wherein you ask the question of whether or not costs must be paid a deputy collector who buys the lands sold and in which sale the deputy collector acts for the collector; and

The question of what the ten per cent commission to the trustee is based upon.

In your request you refer to our opinion dated November 30th, 1937, wherein we held that neither the county collector nor his deputy are authorized to bid in at sales or purchase lands offered for sale for delinquent taxes by the county collector. In view of that opinion, then you ask the question of whether or not the fact that the deputy collector who has been appointed trustee would alter our conclusion taken in

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the foregoing opinion. The trustee mentioned in your letter is appointed by virtue of the provisions of Section 9953b, page 851, Laws of Missouri, 1939, which provides 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. \* \* \* \*"

This section provides that the court may appoint some suitable person with discretionary authority to bid at the sales in which lands are sold and to protect the taxes and prevent loss to the taxing authorities from inadequate bids. Since we have held in the opinion heretofore referred to that the deputy collector would not be authorized to bid at sales or purchase lands offered for sale for delinquent taxes by the collector, we do not think that the fact that the county court would appoint such deputy collector as trustee to bid for it would alter our views taken in the opinion.

In connection with this opinion we would like to particularly call your attention to the statement of the Supreme Court in *McLeod v. Burkhalter, et al.*, 57 Miss. 65, 66, the court said:

"\* \* \* Besides, persons charged with the administration of the fiscal affairs of the people must be content with the gains provided for in the fees and salaries allowed by law, and should not be permitted to augment them by speculations in the funds or property which come under their official control. \* \* \* \* \*"

CONCLUSION.

It is, therefore, the opinion of this department that the deputy county collector would not be a proper person and it would be against public policy to name him to act as trustee for the taxing authorities to purchase lands sold for delinquent taxes by virtue of the provisions of Section 9953b, page 851, Laws of Missouri, 1939.

II.

You next submit the question that in case such deputy collector is a trustee and has bought lands at such sales and has taken title as such trustee, are the acts of such deputy collector void or voidable, and can he make a good title to the lands which he has so purchased and is holding as trustee?

If the deputy collector is not authorized to act as such trustee and he does as such regardless of such unauthorization, then we think he would come within the classification of a de facto officer. Since we have held in our first conclusion that such deputy collector is not qualified to act as the trustee to represent the county court at delinquent land sales, then this question here would involve the question of whether or not such deputy's acts would be void or voidable. We think that such deputy collector appointed as trustee would be a de facto appointee. In *St. Louis County v. John Sparks*, 10 Mo. page 80, the question of the acts of a de facto officer was considered by the court and there the rule was stated as follows:

"The appointment of a person to an office, who has not the necessary

qualifications, is not void. He is de facto an officer, and his acts, until his removal, are valid."

Following the rule announced in the St. Louis County case it would seem that even though the deputy collector, acting as such trustee, does not possess the necessary qualifications to act as such trustee, yet any act which he would perform as such trustee would be valid.

#### CONCLUSION.

Therefore, if such deputy collector trustee buys land and takes title as a designated trustee, then he may make a title to such lands and convey the interest that he has obtained as trustee.

#### III.

On the question of whether or not such deputy collector trustee would be entitled to the compensation provided by the statute for the trustee on the resale of lands granting that such appointment is against public policy, in view of the fact that he is acting as a de facto officer, we think the rule is applicable which is announced in State, ex rel., v. Clark, State Auditor, 52 Mo. 508, wherein it is held that he who has the commission is entitled to the emoluments of the office until his authority is revoked by proper proceedings. And in the case of Dickerson v. City of Butler, 27 Mo. App. 9, l. c. 14, the court said:

"\* \* \* It must be considered as the settled law of this state that, in an action for fees, the title to the office cannot be decided, and that a de facto officer, while in possession of the office, can recover the fees of the office. \* \* \*"

#### CONCLUSION.

Following the rule announced in the above cases

it is the opinion of this department that the trustee, though he may not have the qualifications to act as such, is a de facto officer and is entitled to the emoluments of the office during the time that he is acting as such.

IV.

In your supplementary request of the 8th, you requested an opinion on whether or not the costs must be paid by a deputy collector who buys in at his own sale and also the question of just what the ten per cent commission is based upon.

You will refer to Section 9953b, page 851, Laws of Missouri, 1939, and it will be seen that the trustee is not entitled to this ten per cent commission until he sells this land. Since we have ruled above that the trustee, even if he is a de facto trustee, is entitled to the fees for his services. That being the case the trustee, who is a deputy collector, if he buys in the land for the proper officials, and sells them he would be entitled to the ten per cent commission. Said Section 9953b, supra, provides in part as follows:

"\* \* \* 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. \* \* \* \* \*

You will note from the language of this section that the trustee is to receive not in excess of ten per cent of the price for which he sells lands and lots which he is holding as such trustee.

CONCLUSION.

We are, therefore, of the opinion that the trustee, even though he is a deputy collector, if he performs the

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acts of a trustee, is entitled to the commission authorized by the statute for such services.

We are further of the opinion that the basis of the compensation to which such trustee is entitled for selling lands which he has purchased as such official is ten per cent of the sale price for which such lands and lots are sold.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General

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