

TAXATION :
AND REVENUE :

1. Trustee appointed under the provisions of 9953b, Laws of Missouri 1939, at page 851, is to receive his fees as a part of the costs.
2. That by order of County Court the trustee may sell for a less or greater sum than the taxes.

December 30, 1939.

Honorable F. Hiram McLaughlin
Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Mr. McLaughlin:

We desire to acknowledge your request for an opinion on December 28, 1939, which is as follows:

"This office is in need of an opinion interpreting the law permitting the County Court to appoint a trustee to purchase land at delinquent tax sales. The pertinent provision of this statute is found at page 852, Laws of 1939.

"The law permits the trustee to bid where no other bids are received sufficient to pay in full all delinquent taxes, penalties, etc. The law also provides that the proceeds of such sales should be applied first to payment of costs, and the balance distributed pro rata to the funds entitled to receive the taxes.

"It also provides the compensation of trustees is payable solely from the proceeds derived from the sale of lands purchased by them as trustees.

"Does this statute mean that a commission can not be paid to trustee until all costs, delinquent taxes, interest and penalties, have been paid in full, or can the trustee be paid a commission

from the proceeds of the sale price, even though the sale price be insufficient to take care of the costs and taxes?

"Also does the trustee have authority, with the approval of the County Court, to accept a bid in a less sum than the costs and taxes and penalties or does he have to have a bid equal to the amount of these things? Hoping we have made ourselves clear, and thanking you for your views on this matter, we are"

I.

DOES THIS STATUTE MEAN THAT A COMMISSION CAN NOT BE PAID TO TRUSTEE UNTIL ALL COSTS, DELINQUENT TAXES, INTEREST AND PENALTIES HAVE BEEN PAID IN FULL, OR CAN THE TRUSTEE BE PAID A COMMISSION FROM THE PROCEEDS OF THE SALE PRICE, EVEN THOUGH THE SALE PRICE BE INSUFFICIENT TO TAKE CARE OF THE COSTS AND TAXES?

Section 9953b, Laws of Missouri 1939, at page 851, is, in part, as follows:

" * * * 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. * * * 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, * * * "

Under the provisions of the above statute, it seems clear that the trustees fees, become a part of the costs and as such are to be paid prior to the pro rata distribution.

In the case of Township Board of Education v. Boyd, 58 Mo. 276, the county court was trustee for the care and management of the school fund of the township. It instituted certain injunction proceedings for the protection of the fund and gave an injunction bond signed by J. K. Boyd and J. B. Johnson, two of the justices of the county court. Upon dissolution of the injunction a judgment was issued against said obligors, one of whom, paid the same, and by a court order he was reimbursed out of the township school fund. In this case the court said:

"The county court was a trustee for the 'care and management' of the school fund of the township. In this capacity, and in the exercise--for aught that appears to the contrary--of its soundest judgment and discretion, it instituted certain injunction proceedings for the protection of the fund. The law required personal security for the purpose, which was given. A judgment against the surety following, which judgment he was bound to pay, and did pay, it would be strange if the law should refuse to indemnify him from the interest which his suretyship had so served at a sacrifice."

Certainly upon the basis of equitable principles, a trustee would be entitled to the payment of his costs out of the funds which he held as trustee for reasonable services rendered and for a definite fee fixed by statute. In laying down a rule that the burden of protecting a trust fund shall fall upon the fund itself, the Supreme Court, in the case of *Morrow vs. Pike County*, 180 Mo. 622, held:

" * * * But it is fundamental that, conceding the right to make the contract in question, the burden of protecting the trust fund shall fall upon the fund itself on well-recognized equitable principles."

Honorable F. Hiram McLaughlin - 4 - Decmeber 30, 1939.

CONCLUSION

Therefore, it is the conclusion of this department that, a trustee selling land under the provisions of Section 9953b, supra, is entitled to have his fees listed as costs to be paid before a pro rata distribution to the funds entitled to receive the taxes and that on the basis of well recognized equitable principles, such trustee shall be entitled to his fees for executing and protecting the trust and that such fees should be a burden upon the fund itself.

II.

ALSO DOES THE TRUSTEE HAVE AUTHORITY,
WITH THE APPROVAL OF THE COUNTY COURT,
TO ACCEPT A BID IN A LESS SUM THAN
THE COSTS AND TAXES AND PENALTIES OR
DOES HE HAVE TO HAVE A BID EQUAL TO
THE AMOUNT OF THESE THINGS? HOPING
WE HAVE MADE OURSELVES CLEAR, AND
THANKING YOU FOR YOUR VIEWS ON THIS
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This inquiry is answered in the conclusion of an opinion rendered by this department to Honorable George B. Bridges, Prosecuting Attorney of Mississippi County on December 19, 1939, a copy of which is enclosed herein.

Very truly yours,

S. V. MEDLING
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney-General
SVM:LB
Encl.