

TAXATION AND REVENUE: Legal representative of minor may redeem from the Collector after sale and delivery of deed, if no controversy of fact; otherwise right of party to redeem must be established in court of competent jurisdiction.

February 28, 1939.

Mr. Dewey Minich  
Collector of the Revenue  
Alton, Missouri

Dear Mr. Minich:

We are in receipt of a letter of February 22, 1939 from Forrest Smith, State Auditor, enclosing your letter to him dated February 13, 1939 requesting an opinion, from this department, your letter being as follows:

"We will appreciate it if you will procure an opinion, either from your department or from the Attorney General, relative to the redemption of property sold for non-payment of taxes.

"On November 2nd, 1936 a particular tract of land in this County was offered and sold for non-payment of taxes due thereon, being purchased at a price less than the total amount of taxes and cost due thereon. Due to fact that the two years had elapse, the purchaser was given a collector's deed for this land. Since issuing and recording the deed, we have been notified that two minor heirs own this land and wish to redeem it. Since the laws of Missouri provides that the minors may redeem either through their Guardian or next friend, we are at a lose in determining just what procedure they shall take in redeeming this land.

"We have taken it up with Mr. J. E. Sanders, County examiner, and finally came to the conclusion that inasmuch as the collector issued a deed for this land and as it is specified therein that 'TO HAVE AND TO HOLD the said mentioned tracts or parcels of land, with the appurtenances thereto respectively belonging, to the said party of the second, his heirs and assigns forever, in as full and ample a manner as the collector of said count is empowered by law to sell the same', it would indicate that the collector would have no further claim on this land and any redemption would come outside the collector's office and jurisdiction.

"We also understand that the Guardian of the children at the present time was also the Guardian at the time that the land sold for taxes.



"In Section 9956a of the Missouri laws of 1933 it fails to indicate the procedure in making the redemption after a deed has been issued to the purchaser for the land involved.

"Any information you may be able to give concerning this matter will be greatly appreciated and thanking you very kindly in advance, I remain"

Section 9956a is 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, with interest at the rate of eight percentum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption. Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his heirs or assigns,

at the last postoffice address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time."

Section 9956b is as follows:

"Infants, idiots, insane persons and persons in confinement may redeem any lands belonging to them sold for taxes, within two years after the expiration of such disability, in the same manner as provided in the preceding section for redemption by other persons."

Section 9956c is as follows:

"In case any lasting and valuable improvements shall have been made by the purchaser at a sale for taxes, or by any person claiming under him, and the land on which the same shall have been made shall be redeemed as aforesaid, the premises shall not be restored to the person redeeming, until he shall have paid or tendered to the adverse party the value of such improvements; and, if the parties can not agree on the value there-

of the same proceedings shall be had in relation thereto as shall be prescribed in the law existing at the time of such proceedings for the relief of occupying claimants of lands in actions of ejectment. No compensation shall be allowed for improvements made before the expiration of two years from the date of sale for taxes."

Section 9957a is, in part, as follows:

"Such conveyance shall be executed by the county collector, under his hand and seal, witnessed by the county clerk and acknowledged before the county recorder or any other officer authorized to take acknowledgments and the same shall be recorded in the recorder's office before delivery; a fee for recording shall be paid by the purchaser and shall be included in the costs of sale. Such deed shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of sale, of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, that said land or lot had not been redeemed and that the period therefor had elapsed, and prima facie evidence of a good and valid title in fee simple in the grantee of said deed, \* \* \* "

Section 9962c, in part, is as follows:

"The remedies granted by this section and section 9962d shall not be held exclusive but in addition to any applicable remedies now or hereafter existing."

Section 9962d is as follows:

"If any conveyance made by the county collector, pursuant to a sale made for the non-payment of taxes, under this or any former tax law, shall prove to be invalid and ineffectual to convey title for any other cause than such as are enumerated in section 9960b the lien which the state had on such land for state, county, township, school and all lawful purposes, together with all lawful charges, shall remain in full force, and shall be transferred by such deed to the grantee and vested in him, his heirs and assigns, who shall be entitled to a lien upon such lands, and the same shall be bound for the final payment thereof; and in case judgment be rendered against the person holding the title from the collector, as aforesaid, for the recovery of such land, in an action of ejectment or other action, either at law or in equity, brought by the owners of such lands, heirs or assigns, the court shall ascertain the amount due to the party holding such tax deed and from whom due for principal and interest and for all improvements made by him on such lands including subsequent taxes paid with interest, and shall decree the payment thereof within such reasonable time by the owner of such land; if there be an owner of any life estate or any other person first liable for the payment of such taxes, such ownership and liability shall be ascertained by the court and entered of record in such cause, and in default of such payment the court shall decree that such life estate, the interest of such debtor in such lands and the fee simple thereof, shall be sold therefor or sufficient thereof to pay the amount of such improvements, principal and interest as above set forth, due to the party having the collector's deed, his heirs and

assigns. Such property shall be offered and such sales shall be made in the order, and in the manner and form as provided in section 9962c: Provided, That there shall be no right of redemption of such property or of any such interest therein, after the date of sale, and the sheriff shall, upon receipt of the purchase money, execute to the purchaser a deed in fee simple or a lease for the unexpired term of the part or interest so sold, as the case may be, and the purchaser shall have the right of immediate possession of such land or lot and the improvements thereon. At such sale if such land or any part or parcel thereof or any interest therein be sold for a sum in excess of the lien and cost, then such surplus shall be paid over to the person or persons lawfully entitled thereto as such rights are determined by the court in its decree in said cause."

The sale, referred to in your inquiry, having been made for less than the total amount of the taxes, penalty, interest and costs was invalid unless made under and by virtue of Section 9953a Senate Bill No. 94, Laws of Missouri for 1933 at page 432. Therefore, we are presuming that such sale, was executed under said Section 9953a.

After two years from the date of the sale the certificate holder may obtain title as provided in Section 9957a, supra.

In case there should be no controversy that the owner was an infant, idiot or person in confinement and he was a proper party in interest at the time of the sale of the land, the Collector could permit him, through his legal representative, to redeem under and by virtue of Section 9956a, supra. If the purchaser, after two years from the date of the sale, could not agree with the owner as to the value of improvements such controversy would necessarily be submitted under the provisions of Sections 9956c, supra.

Let us presume that a party sought to redeem on account of infancy and that at the time of the sale, the father, being the record owner, was alive, or that he had not been heard from for over seven years at the time of such sale and was presumed to be dead. These and many other controversial questions might arise that could not be determined by the Collector and should be submitted to a court of competent jurisdiction.

Under the provisions of Section 9956b, supra, many years may pass after the sale before an owner appears to redeem. A new collector would probably be in office and the collector's record would not reveal the claimant nor evince his rights. Neither would such record show the trend of title nor the improvements made nor subsequent taxes paid by the purchaser on the property sold under the Jones-Munger Bill. Section 9954a of said bill provides that the rent collected by the purchaser shall be endorsed on the certificate as a credit. A suit for accounting might arise over a charge that such credits were not accurate.

Section 9962d, supra, provides for such contingency. Under that section, when the conveyance is ineffectual, the grantee is subrogated to the rights of the state and has a lien upon the lands sold - for the taxes and all lawful charges. It recognizes that the former owner may bring a legal or equitable action for the recovery of the land but provides that the lien must first be paid. Therefore an owner whose land sells for taxes may choose his forum in which to seek his rights. It could not have been the purpose of the bill to clothe the collector with power of a court to pass upon controverted facts, the establishment of which was a condition precedent to the right to redeem.

#### CONCLUSION

Therefore, it is the opinion of this department that after land is sold and a deed is delivered therefor as provided in Section 9957a, supra, a minor, through his or her legal representative, may redeem land, from the collector, which such minor owned at the time of sale, under the provisions of Section 9956a, supra; Provided, that there is no question of contest as to the facts necessary to establish

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the rights of such minor to redeem and in that event the right of the minor to redeem must be determined by some court of competent jurisdiction.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

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J. W. BUFFINGTON  
(Acting) Attorney General

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