

**TAXATION AND:** (1) Collector can offer resales after effective  
**REVENUE :** date of Senate Bill No. 311. (2) Necessary  
steps for collector to follow. (3) When collec-  
tor should issue a tax deed thereunder. (4) Re-  
troactive feature of Senate Bill No. 311

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December 12, 1939.

FILED: #83

Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri



Dear Mr. Smith:

We desire to acknowledge your request for an opinion on December 7, 1939, which is as follows:

"Under the provisions of Senate Bill 94, laws of Mo. 1933, the collectors of Missouri have been establishing two items in the back real estate tax books as follows:

To balance of tax due from third sale of real estate subject to two year redemption.

To balance of tax due from third sale of real estate subject to one year redemption.

"These items consist of the amount of taxes which were not realized from the proceeds of property sold at third offering, or stated another way, they represent the unpaid balance of taxes after the proceeds derived from third sales have been pro-rated and deducted from the back real estate tax charge.

"Amounts representing such tax balances are carried in the collector's books for the sales which were held in November 1937 and 1938, and which had occurred before the effective date of Senate Bill 311. The maintenance of such accounts were necessary under Senate Bill 94, in view of Section 9953B which provided for resale on failure of the

redeemer to pay balances on tax bills which were unpaid out of proceeds at third sales.

"In view of this situation we would like answers to the following questions embodied in an opinion:

- (1) Can a collector offer the remaining unpaid balance of taxes for resale after the effective date of Senate Bill 311?
- (2) If these resales can be made, what are the necessary steps for the collector to follow in order to make such sales valid?
- (3) If such sales are made when should a collector issue a tax deed?
- (4) Is Senate Bill 311 retroactive in effect in respect to these special items caused by the provisions of Section 9953B of Senate Bill 94?
- (5) If such resales cannot be made by the collector what disposition should be made of the unpaid balance of taxes on 1937 and 1938 sales and on which certificates of purchase with redemption features are outstanding?"

I.

CAN A COLLECTOR OFFER THE REMAINING UNPAID BALANCE OF TAXES FOR RESALE AFTER THE EFFECTIVE DATE OF SENATE BILL NO. 311?

Section 9953a, of Senate Bill No. 94, Laws of Missouri 1933, page 432, is as follows:

"Whenever any lands have been or shall hereafter be offered for sale for delin-

quent 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 9953b, thereof, page 432, is as follows:

"Such lands may be redeemed from such sale upon the same terms and conditions as other lands may be redeemed from delinquent tax sales, as provided herein; but in the event of the redemption of any land from any sale made under the provisions of this act, the land so redeemed shall be liable to resale by such county collector at the next or any subsequent tax sale of lands for delinquent taxes for all delinquent taxes, penalty, interest and costs not paid by such sale."

Senate Bill No. 311, Laws of Missouri 1939, at page 850, repeals the above two sections and Section 9953a, thereof, is, in part, 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 same to the highest bidder, and there shall be no period of redemption from such sales. No certificate of purchase shall issue as to such sales but the purchaser at such sales shall be entitled to the immediate issuance and delivery of a collector's deed. \* \* \* (Underscoring ours)

Sales for general delinquent taxes on lands and lots began November 6, 1939, at which time Senate Bill No. 311, supra, was in full force and effect.

Therefore, sales submitted and made thereunder eliminated the right of redemption from such sales and thereby made them final. There could be no further offering for deficiency delinquent taxes under the conditions and procedure of Section 9953b, supra, where the sale was executed under the provisions of said Section 9953a of said Senate Bill No. 311.

Under the provisions of Section 9952c, Laws of Missouri 1933, at page 431, providing for the first offering of lands for delinquent taxes on real estate, there could be no sale unless the bid was for the full amount of taxes, penalty, interest and costs. The same is true of a second sale or "reoffering" under the provisions of Section 9953 thereof. Therefore, the resale or "deficiency" provision of Section 9953b of Senate Bill No. 94, supra, can only refer to Section 9953a of Senate Bill No. 94, supra, which is commonly termed the "third sale" or the sale to the highest bidder.

If, under the provisions of Section 9953a or "third sale" of Senate Bill No. 94, a sale were effectuated which might bring the total taxes, penalty, interest and cost, the state's claim would be satisfied and the collector could not invoke the deficiency clause. However, a bid for less than such sums would create a deficiency which the collector must enforce, provided:

" \* \* \* but in the event of the redemption of any land from any sale made under the provisions of this act, the land so redeemed shall be liable to resale by such county collector at the next or any subsequent tax

sale of lands for delinquent taxes for all delinquent taxes, penalty, interest and costs not paid by such sale."

A delinquent third tax sale, made by the collector under the provisions of said 9953a, Senate Bill No. 94, for less than the total amount of taxes, penalty, interest and costs, in event of redemption under the provisions of said Section 9953b would reveal on the books of the collector a balance of the taxes, penalty, interest and costs, after crediting the amount with the proceeds of such third sale.

### CONCLUSION

Therefore, it is the opinion of this department that if, prior to the effective date of Senate Bill No. 311, Laws of Missouri 1939, a sale were had under the provisions of Section 9953a, Laws of Missouri 1933, for less than the total amount of taxes, penalty, interest and costs, that unpaid part would constitute a deficiency, and, if redeemed, such deficiency should be enforced by the collector by submitting the same to resale at the time and in the manner provided in said Section 9953b.

### II.

#### IF THESE REALES CAN BE MADE, WHAT ARE THE NECESSARY STEPS FOR THE COLLECTOR TO FOLLOW IN ORDER TO MAKE SUCH SALES VALID?

The only statutory provisions of procedure in effectuating such resales is found in Section 9953b.

The above statute provides that "the land so redeemed shall be liable to resale \* \* \* at the next or any subsequent sale of lands for delinquent taxes", which clearly indicates one offering for the resale.

If the legislature had intended that the procedure for resale should follow the procedure of the original sales, the bill would have provided for a first, second and third sale for such resale. The language of said section plainly expresses that one sale is intended and that the lands to be submitted for such resale shall be advertised and sold at the time and in the manner other delinquent tax sales of real estate are executed.

In State ex rel. Barrett v. Boeckler Lumber Co., 301 Mo. 445, 532, in speaking of whether a statute means what it says when it is plain, the Supreme Court en banc said:

"The statute of this State leaves scant room for construction. We are not concerned in this case with any question as to a contract, otherwise lawful, which incidentally restrains trade. The rule applicable in such a case is not applicable in this. Nor is it within our province to give the statute any other meaning than its language imports. Our duty to apply the statute as it is written is as plain as the language of that statute and in that language there is no ambiguity. \* \* \*"

### CONCLUSION

Therefore, it is the opinion of this department that a resale must be advertised and executed at the "next or any subsequent tax sale of lands in the same manner that other lands are offered for sale but that there may be only one offering for such sale.

### III.

IF SUCH SALES ARE MADE, WHEN SHOULD A COLLECTOR ISSUE A TAX DEED?

When a sale is made upon advertisement for resale under the provisions of Section 9953b, supra, there being no special statute providing redemption, redemption therefrom is controlled by the general statute of redemption, to-wit:

Section 9956a, Laws of Missouri 1933, at page 437, which provides that parties interested in the land may redeem at any time during the two years next ensuing.

#### CONCLUSION

Therefore, after the expiration of the two years redemption period, a purchaser is entitled to receive and the collector must issue a deed to a purchaser under a resale providing he pays taxes accruing after the issuance of the certificate and all prior taxes, that may remain due and unpaid on said property, and the lien for which was not foreclosed by the sale under which the holder of the certificate makes demand for the deed as provided in Section 9957c, Laws of Missouri 1933, at page 440.

#### IV.

#### IS SENATE BILL 311 RETROACTIVE IN EFFECT IN RESPECT TO THESE SPECIAL ITEMS CAUSED BY THE PROVISIONS OF SECTION 9953B OF SENATE BILL 94?

Section 15, Article II of the Constitution of Missouri, is as follows:

"That no ex post facto law, now law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities can be passed by the General Assembly."

After the effective date of Senate Bill No. 311, all offerings under Section 9953a, thereof, which provides that "whenever any lands have been or shall hereafter be offered for sale for delinquent taxes \* \* \* 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 there shall be no period of redemption from such sales", cannot be submitted for resale because "no certificate of purchase shall issue as to such sales but the purchaser at such sales shall be entitled to the immediate issuance and delivery of a collector's deed." Such so-called third sale is final. Therefore, there can be no redemption and deficiency resale.

Third sales consummated under the provisions of Sections 9953a, Laws of Missouri 1933, or third sale, prior to the effective date of Senate Bill No. 311 and deficiency resales - in case of redemption - under the provisions of Section 9953b, Laws of Missouri 1933, prior to the effective date of Senate Bill No. 311 could not be affected by said Senate Bill No. 311 because the redemption rights and rights of the certificate-holder involved in such sales and resale would be a vested right and to hold that such sales were affected by said Senate Bill No. 311, which is retrospective in its terms, would bring them within the constitutional ban of retrospective laws or laws which create a new obligation or impose a new duty. The same would be true of so-called third sales under the 1933 law prior to the effective date of Senate Bill No. 311 but where the resales thereunder were had after the effective date of said Senate Bill No. 311.

Senate Bill No. 94 and Senate Bill No. 311 are both procedural laws for the collection of delinquent taxes.

A statute which is remedial or procedural, and especially one providing for the enforcement of the lien of county and state for delinquent taxes on real estate already assessed and levied, may be retroactive and not come within the above constitutional inhibition.

In construing this question, the Supreme Court in *McManus vs. Park*, 287 Mo. 1. c. 115, says:

" \* \* \* This, however, applies only to statutes which would affect vested rights, and not to statutes which are remedial only. No one has a vested interest in the form of procedure; no one has a vested right to have his cause tried by any particular mode. (*Schuermann v. Union Cent. Life Ins. Co.*, 165 Mo. 1. c. 652; *Roefeldt v. St. L. & Sub. Ry. Co.*, 180 Mo. 1. c. 564; *State v. Taylor* 134 Mo. 1. c. 144-145; *State ex rel. v. Taylor*, 224 Mo. 1. c. 464; *St. Louis v. Calhoun*, 222 Mo. 1. c. 52.)

"This court said in case of *Mainwaring v. Lumber Co.*, 200 Mo. 1. c. 732-733:

"'Acts changing remedies in any way that do not destroy or impair vested rights, are excluded from the rule invalidating retrospective laws, even when they are intended to retroact.'"

In the course of said opinion, the court further said:

" \* \* \* A statute may retroact without being retrospective in the sense that it is inimical to the Constitution. So far as remedies are concerned, it may operate upon property rights and interests which are already vested, but the remedial action authorized by the statute of course applies to the future. It has been many times held by this court that a statute is not retrospective in its operation, within the terms of the Constitution, unless it impairs some vested right.  
\* \* \* "

Also:

"'This, because the retrospective laws forbidden by that instrument are laws impairing

existing vested civil rights. The law must take away such vested right, or it must create a new obligation, impose a new duty, or attach a new disability in respect to gone-by transactions, in order to be retrospective and under the constitutional ban. There is no vested right in a particular mode of procedure.'

"The amplification of the principle in the last sentence of the first paragraph quoted, only particularizes what is meant by existing vested rights. A law which does not impair any vested right is not retrospective in the constitutional sense, although it may change the remedy or provide new remedies for enforcing or defining such a right. \* \* \* "

The rule in Missouri is that a law is not retrospective in its operation, within the terms of the Constitution, unless it impairs some vested right.

The court has defined vested rights in the case of State ex rel. vs. Hackman, 272 Mo. 600, 607, as follows:

" \* \* \* By a vested right we mean one which is absolute, complete and unconditional (Orthwein v. Insurance Co., 261 Mo. 1. c. 665), to the exercise of which no obstacle exists and which is immediate and perfect in itself and not dependent upon a contingency. (Young v. Jones, 180 Ill. 1. c. 221; Bailey v. Railroad, 4 Harr. (Del.) 1. c. 400; Day v. Madden, 9 Colo. App. 464; Royston v. Miller, 76 Fed. 1. c. 53) \* \* \* "

The Supreme Court of Arkansas, in the case of Matthews vs. Bailey, 131 S. W. (2nd) 423, 428, gave the following definition of a vested interest:

" \* \* \* 'A vested right "must be something more than a mere expectation bas-

ed upon the anticipated continuance of exist-  
ings laws. It must have become a title \* \* \*  
to the present or future enjoyment of property,"  
in some way or another \* \* \* But parties have  
no vested rights in remedies or matters of pro-  
cedure. It is also well settled that no one  
has a vested right in a public law. *Roberson*  
*v. Roberson*, 193 Ark. 669, 101 S. W. 2d 961."

A retrospective law to be forbidden by the consti-  
tution must either impair existing civil rights or using  
the expression of the court in *Mainwaring v. Lumber co.*,  
*supra*, "it must create a new obligation, impose a new  
duty, or attach a new disability in respect to a gone-by  
transaction, in order to be retrospective and under the  
constitutional ban".

In the case of *Smith v. Dirckx*, 283 Mo. 188, the  
court in applying an amendment of 1919, which undertook  
to assess an additional 1% upon that portion of the net  
income for the calendar year of 1919 which was received  
by the appellant prior to the going into effect of said  
amendment, held that, it did create a new obligation or  
impose a new duty but pointed out:

"However, this should not operate to prevent  
the collection of a tax not exceeding one-  
half of one percent for the period above men-  
tioned. This for the reason that since the  
old law imposed a tax of one-half of one per  
cent upon that portion of his income which  
appellant received prior to the taking ef-  
fect of the 1919 amendment, that portion of  
the amended rate which did not exceed the  
old rate did not create a new obligation or  
impose a new duty. It therefore follows  
that a tax not to exceed one-half of one  
per cent may be collected under the amend-  
ment with reference to the net income re-  
ceived by appellant prior to the going into  
effect of the amendment, without violating  
the Constitution."

In State ex rel. Bair vs. Producers Gravel Co., 341 Mo. 1106, 1112, the court said:

"Section 658, Revised Statutes 1929, (Mo. Stat State Ann., Sec. 658, p. 4910), provides ' . . . nor shall any law repealing any former law, clause or provision be construed to abate, annul or in anywise affect any proceedings had or commenced under or by virtue of the law so repealed, but the same shall be as effectual and be proceeded on to final judgment and termination as if the repealing law had not passed, unless it be otherwise expressly provided.' What is now Section 658 was passed in 1822, Revised Statutes of 1825, page 492, and has remained without change.

"Also, Section 660, Revised Statutes 1929 (Mo. Stat. Ann., p. 4912), is pertinent. This section is as follows: 'The repeal of any statutory provision shall not affect any act done or right accrued or established in any proceedings, suit or prosecution, had or commenced in any civil case previous to the time when such repeal shall take effect; but every such act, right and proceeding shall remain as valid and effectual as if the provisions so repealed had remained in force.'

"In State ex rel. Wayne County v. Hackman, 272 Mo. 600, 1. c. 609, 199 S. W. 990, the purpose of what are now Sections 658 and 660, was considered, and it was there said that the general nature of these sections 'authorizes the conclusion that they were intended to continue in force repealed laws until proceedings commenced thereunder, regardless of their nature, might be completed.'"

In construing the right of taxpayers as to original assessments and special assessments of drainage districts under an amendatory act, the court in State ex rel. Ross v. General American in 336 Mo. 829, 839-840, the court held:

" \* \* \* Or, as stated conversely in Sedgwick on Statutory and Constitutional Law, 160: 'A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions . . . already past, is to be deemed retrospective or retroactive.' Respondent's cases cited in support of this point are State ex rel. v. Redman, supra; Hope Mutual Insurance Co. v. Flynn, 38 Mo. 483; Barton County v. Walser, 47 Mo. 189; Gast Realty, etc., Co. v. Schneider, 296 Mo. 687, 246 S. W. 177; Smith v. Dirckx, 283 Mo. 188, 223 S. W. 104.

"No existing contractual rights of the land-owners were infringed upon or violated through said amendment. 'We do not hesitate . . . to say that the charter of a public corporation does not constitute a contract with its members that the laws it was created to administer will not be changed; and the State is still at liberty, as to them and the corporation, to continue its efforts to improve its methods of taxation with respect to these subjects.' (Houck v. Drainage District, 248 Mo. 373, 1. c. 394, 154 S. W. 739. See, also, Barnes v. Pikey, 269 Mo. 398, 190 S. W. 883; Rauch v. Himmelberger, 305 Mo. 70, 264 S. W. 658.)"

In Aetna Insurance Co. v. O'Malley, 342 Mo. 800, 812, the court said:

"It is true that Section 5874 was not in effect when the review action was brought.

The review action was brought on November 10, 1922. The effective date of Section 5874 was June 25, 1923. Although Section 5874 was not in effect when the review action was brought, its applicability to that action depends upon whether or not it is a procedural statute. If it deals with procedure only, it was applicable to and should have governed the case from its effective date June 25, 1923. The rule governing the applicability of procedural statutes under such circumstances is stated by this court in *Clark v. Railroad*, 219 Mo. 524, 534, 118 S. W. 40, 43, as follows:

"No person can claim a vested right in any particular mode of procedure for the enforcement or defense of his rights. Where a statute deals with procedure only, prima facie it applies to all actions - those which have accrued or are pending, and future actions. What was before a subject of equitable relief may be made triable by jury without affecting vested rights. If, before final decision, a new law as to procedure is enacted and goes into effect, it must from that time govern and regulate the proceedings."

#### CONCLUSION

Therefore, the sales provided in Section 9953a, Senate Bill No. 94 and amendatory Senate Bill No. 311, after the effective date of said Senate Bill No. 311 would be controlled by the procedure of said Senate Bill No. 311, but sales consummated under the provisions of Section 9953a, Senate Bill No. 94, before the effective date of Senate Bill No. 311 would be controlled by the procedure of Senate Bill No. 94 and resales based thereon would be controlled by the procedure of said Senate Bill No. 94 even when executed after the effective date of said Senate Bill No. 311.

V.

IF SUCH REALES CANNOT BE MADE BY THE  
COLLECTOR WHAT DISPOSITION SHOULD BE  
MADE OF THE UNPAID BALANCE OF TAXES ON  
1937 and 1938 SALES AND ON WHICH CERTI-  
FICATES OF PURCHASE WITH REDEMPTION  
FEATURES ARE OUTSTANDING?

This question has been answered by the answers to the above questions holding that resales can be executed after the effective date of Senate Bill No. 311 where the sale under Section 9953a Senate Bill No. 94 was consummated prior to the effective date of said Senate Bill No. 311.

Respectfully submitted,

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