

TAXATION AND :  
REVENUE :

Sale for taxes for 1932, barred by statute of limitations from sale in 1938, absent suit for taxes or judgment thereon or action under Senate Bill #94. Collector failing to exercise statutory remedy of collecting taxes is liable on his bond for the same.

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September 13, 1939



Mr. Chas. M. Strong  
Macon County Collector  
Macon, Missouri

Dear Mr. Strong:

We desire to acknowledge your request for an opinion on September 11, 1939, which is as follows:

"The previous collector of Macon County failed to advertise for tax sale in 1937 several pieces of property which had 1932 taxes delinquent, but advertised and offered them for sale in 1938.

"Since he failed to advertise these taxes, are they outlawed, and if so, should they be charged to the previous collector by the county court.

"If they are not outlawed, will the sale this fall be the second or third sale?"

Section 9952, Laws of Missouri, page 429 is as follows:

"Between the first of January and the first of July in the year 1934 and annually thereafter, and immediately upon the effective date of this act, the county collector shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, including therein the delinquent taxes of all cities and incorporated towns having authority to levy and collect taxes under their respec-

tive charters or under any law of this state returned delinquent to the county collector, separately stated, describing such lands or lots as the same are described in the tax books and said delinquent returns, as corrected under sections 9938 and 9942, and charging them with the amount of delinquent tax and naming the years delinquent, separately stated, and in addition thereto a penalty of ten per centum on such tax delinquent for the preceding year and an additional annual ten per centum on taxes for each year prior to the preceding year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same by himself, or deputy, officially; provided however, if taxes are paid on land or lots delinquent for the preceding year at any time prior to sale thereof as in this act provided, the per centum of penalty added shall not exceed one per centum per month or fractional part thereof or ten per centum annually. It shall be the duty of the county clerk and county collector to compare the collector's record of such list of delinquent lands and lots as corrected with the corrected 'delinquent land list' made pursuant to sections 9938 and 9942, and the county clerk shall certify in the 'delinquent land list' on file in his office that same has been properly recorded in the collector's office and shall attach a certificate at the end of the record of such list of delinquent lands and lots in the collector's office that such record contains a true copy of the 'delinquent land list' on file in his office. And where the words 'back tax book' are now used in laws pertaining to the collection of taxes on delinquent lands, real estate and/or lots, the record of the list of delinquent lands and lots in the collector's office under the provisions of this act shall be held to be (where applicable and except as to city or town 'back tax book') such 'back tax book', and the recording of same by the collector and certification by the county clerk as herein provided,

shall be construed as a making of such 'back tax book' of delinquent real estate, lands and lots. Said collector shall be charged with the taxes, penalty and interest shown on such record of the list of delinquent lands and lots."

Section 9952a thereof is as follows:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale; provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor. The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

Section 9962b thereof is as follows:

"All lots, tracts and parcels of land upon which taxes assessed or levied prior to the taking effect of this act remain due and unpaid at the date when such taxes would have become delinquent as provided in the act under which they were assessed and levied, and which taxes are not merged in judgment prior to the effective date of this act, shall be deemed to be delinquent under the provisions of this act, and the same proceedings shall be had to enforce the payment of such unpaid taxes, with interest, penalty and costs, and payment en-

forced and liens foreclosed under and by virtue of the provisions of this act and the same rights of redemption shall attach. For the purposes of foreclosure under this act, the date of delinquency shall be construed to mean the date when the taxes first became delinquent; provided however, that nothing herein contained shall be construed to affect the right of the county collector to proceed to final judgment and foreclosure for taxes upon which suit had been instituted prior to the effective date of this act, but not in final judgment, nor to prejudice the rights of collection of any costs or commissions attaching in such cases which were valid under the tax law existing at the time of institution of such suits. As to taxes merged in judgment at the effective date of this act the foreclosure of the tax lien and proceedings relative thereto shall be had under the provisions of the law as such law existed prior to the passage of this act, and as to suits for delinquent taxes instituted, but not merged in judgment, at the effective date of this act the collector shall have the right to proceed to final judgment and foreclosure of the tax lien under the provisions of the law as it existed prior to the passage of this act, or such collector may, in his discretion, dismiss such suits and proceed to foreclosure of the tax lien under the provisions of this act, subject to the preservation of rights to all valid costs and commissions that may have already attached in such character of suits under the law as it existed prior to the passage of this act."

Section 9961, Laws of Missouri 1935, at page 405 is as follows:

"No proceedings for the sale of land and lots for delinquent taxes under the provisions of Chapter 59, Revised Statutes of Missouri, 1929, relating to the collection of delinquent and back taxes and providing for foreclosure sale and redemption

of land and lots therefor, shall be valid unless initial proceedings therefor shall be commenced within five (5) years delinquency of such taxes, and any sale held pursuant to initial proceedings commenced within such period of five (5) years shall be deemed to have been in compliance with the provisions of said act in so far as the time at which such sales are to be had is specified therein, Provided further, that in suits or actions to collect delinquent drainage and/or levee assessments on real estate such suits or actions shall be commenced within five years after delinquency, otherwise no suit or action therefor shall be commenced, had or maintained."

Section 9985, Laws of Missouri 1935, at page 409 is in part as follows:

" \* \* \* \* Provided, however, that no collector shall be required to give bond in excess of the sum of seven hundred fifty thousand dollars, conditioned that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years next ensuing the first day of March, thereafter, and that he will in all things faithfully perform all the duties of the office of collector according to law. \* \* \* \*"

#### CONCLUSION

Unless suit has been filed or judgment obtained for taxes on real estate as provided in Section 9962b supra, or unless the same has been subjected to sale for such taxes under the provisions of Section 9952a supra and subsequent sections, a statute of limitations provided in Section 9961, supra applies.

Therefore, it is the opinion of this department that absent any action under the above laws of procedure, under the above statute of limitations, it is too late to offer land for sale

Mr. Charles M. Strong

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for taxes for the year of 1932, for the first time, on the first Monday in November, 1938. It is further the opinion of this department that under such circumstances the collector, failing to follow the statutory procedure, and permitting taxes to be barred by said statute of limitations, becomes liable for such taxes on his bond.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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