

TAXATION AND: A trustee appointed, under the provisions of
REVENUE : Section 9953b, Laws of Missouri 1939, at page 851,
may sell lands purchased at a third offering of de-
linquent tax lands under the provisions of Section
9953a, Senate Bill No. 311, Laws of Missouri 1939,
only upon order of the County Court. Lands on which
there were no bids at the offering provided in Section
9953a, supra, must be reoffered by the collector at
February 19, 1940. least once every five years
subsequent to the third offer-
ing to toll the statute of
limitations.

Mr. Paul J. Clay
Clerk of County Court
St. Francois County
Farmington, Missouri

2-21



Dear Mr. Clay:

We desire to acknowledge your request for an opinion on February 15, 1940, that part of your letter constituting your request, being as follows:

"What we desire to know is: does this County have authority through the trustee, Collector or County Court to sell property which was offered for sale at the third sale on which there was no bids, or will the property have to be advertised again next year and just what procedure this County should take covering the above circumstances."

Senate Bill No. 94, Laws of Missouri 1933, at page 425, provided for a first, second and third offering of lands for sale of delinquent taxes on real estate. Section 9953a, thereof, providing for a third offering, was repealed by Senate Bill No. 311, Laws of Missouri 1939, at page 851, making the third offering final by the requirement of a delivery of a deed to the purchaser. Said Senate Bill No. 311 also empowered the county court to appoint a trustee with discretionary authority to purchase at such third offering, which is, in part, as follows:

"SECTION 9953b. 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. * * * All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustees upon order of the County Court of the respective counties and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis, 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. * * * Provided further, that if at any such sale any person bid a sufficient amount to pay in full all delinquent taxes, penalties, interest and costs, then the trustees herein designated shall be without authority to further bid on any such land or lots."

All lands which the trustee purchased at the sales executed under the provisions of said Senate Bill No. 311, may be sold by him at private sale upon order of court for whatever sum the court may decide.

In event no other persons bid at a sale provided by Section 9953a, and the trustee did not exercise his discretion in bidding at said sale there was, of course, no sale.

In event land had been advertised for sale for delinquent taxes at a third offering under the provisions of Senate Bill No. 94, Laws of Missouri 1933 and there was no bid, a statute providing for no further offering, a question of limitation becomes involved.

At the subsequent offering of lands and lots for delinquent taxes, after they had been offered three times under the provisions of said Senate Bill No. 94, without a bid, only such lands should have been reoffered for sale which were not within the statute of limitations.

Section 9952a, Laws of Missouri 1933, at page 430 is, in part, 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, * * * "

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 after delinquency of such taxes, and any sale held pur-

suant 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 9953a of Senate Bill No. 311, Laws of Missouri 1939, at page 851 is, in part, as follows:

" * * * 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. If any lands or lots are not sold at such third offering, then the Collector, in his discretion, need not again advertise or offer such lands or lots for sale oftener than once every five years after the third offering of such lands or lots, and such offering shall toll the operation of any applicable statute of limitations. * * * "

Section 9961, supra, passed in 1935 provided a statute of limitations as to proceedings for the sale of real estate for delinquent taxes and, therefore, applied to all proceedings provided in said Senate Bill No. 94 known as the Jones Munger Law passed in 1933. Said Section 9953a, Senate Bill No. 311, Laws of Mo. 1939, at page 851, repealed the redemption third sale of the 1933 law and created a non redemption

third sale. The 1939 law, in said section, also provided a new statute of limitation applicable to sales under such section, without repealing said Section 9961, supra. They are irreconcilably repugnant to each other and, therefore, the limitation provided in said Section 9953a, Senate Bill No. 311, relating to the subsequent sale to the third sale repeals by implication said Section 9961, supra, but only insofar as it applies to said Section 9953a, Senate Bill No. 311.

This rule applicable to the above proposition was stated in the case, *Miners Bank v. Clark*, 216 Mo. App. 130, 134, as follows:

"Appellants rely on what was said in the case of *Asel v. City of Jefferson*, 287 Mo. 195, 229 S. W. 1046. On pages 207 and 208, the court in discussing these sections of the statute heretofore referred to, held that the Act of 1919 necessarily repeals the Act of 1911. As we understand that case, it holds merely that that portion of sections 8323 and 8324 which related to the doing of the character of work that was done in that case, which was, as the record shows, the repairing and resurfacing of a street, and where the amount fell within sixty cents, would be controlled by the statute of 1919. * * * Section 8301, Revised Statutes 1919, only by implication repeals any portion of sections 8323 and 8324, and it is a well-settled rule of construction that where an old law is repealed by implication it will be repealed only to the extent of making it consistent with the new law. (See 36 Cyc. 1037. See, also, *State ex inf. Major v. Amick*, 247 Mo. 1. c. 290, 152 S. W. 591; *Wrightman v. Gideon*, 247 S. W. 1. c. 137; *State ex rel. v. Clark*, 275 Mo. 1. c. 102, 204 S. W. 1090.)"

Also a rule bearing on the same question was stated in the case of State ex rel. v. Rinke, 140 Mo. App. 645, 662, wherein the court said:

" * * * We are led to this conclusion by following the well-settled rules governing the interpretation of statutes, that a statute is held to be repealed only by an express provision of a subsequent law or by necessary implication; that a later statute will not repeal a former one by implication when the two laws are not irreconcilably inconsistent and can stand together; that if by fair interpretation all the sections of a statute can stand together, there is no repeal by implication, and that where there are two statutes upon the same subject, they should be so construed as that both may stand if possible, the later repealing the earlier, pro tanto as to inconsistent provisions. * * * "

CONCLUSION

Therefore, it is the opinion of this department that a trustee appointed, under the provisions of Section 9953b, Laws of Missouri 1939, at page 851, can sell lands purchased at a third offering of delinquent tax lands only upon order of the county court; that if no bid is offered at such sale, there is no sale, and there being no sale the collector, in his discretion, need not advertise or offer the same oftener than once every five years after said third offering and such offering shall toll the operation of any applicable statute of limitations. It is, further, our opinion that Section 9953a of Senate Bill No. 311, supra, repeals by implication said Section 9961, supra, as to the question of limitations, insofar as it applies to said Section 9953a, supra, and that it is the duty of the collector to offer

Mr. Paul J. Clay

- 7 -

February 19, 1940.

such lands at least once every five years after said third offering, without a bid thereon, in order to toll such statute of limitations.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

SVM:LB