

TAX AND
REVENUE:

Lands sold at the third publication in the years of 1937 and 1938 are not affected by Senate Bill 311, Laws of Mo. 1939, with reference to making such sales final. Deeds are to be made under provisions of Sec. 9957, Laws of Mo. 1933.

February 16, 1940.



In re: 1939 Laws of Missouri.
Sec. 9953a.

Honorable Harold Fenix,
Collector of Revenue
Jasper County,
Carthage, Missouri.

Dear Mr. Fenix:

We desire to acknowledge receipt of your request for an opinion dated February 14, 1940, which reads as follows:

"We should greatly appreciate an opinion from you stating whether or not the above section applies to property sold at the third publication in the years 1937 and 1938, or whether the law applies only to such property as will be sold at the third publication since this law was passed.

"We have been confronted with this problem by several purchasers at sales who are the owners of the property, and we should like a definite statement as to whether we shall issue tax deeds to them for property which they purchased in 1937 and prior years."

In an opinion rendered by this department to Mr. H.L. Jones, County Court Clerk of New Madrid County on October 12, 1939, it was held that:

"Senate Bill No. 311 makes the third sale, and a sale subsequent to the third offering in case sale is not made at the third offering, final by requiring the delivery of a deed by the collector. The bill, therefore, makes such sales final and nullifies the equity of the redemption from the same of all parties interested

including all junior lienors. There could then be no resale for the deficiency after such third or subsequent final sale under the provisions of Senate Bill No. 311 of the Laws of 1939 because such resale for a deficiency could be executed only after a third sale was had under the 1933 Act and a redemption therefrom, which will be repealed on the effective date of Senate Bill No. 311.

"Redemption is further provided in Section 9956a in the 1933 Act, supra, and, Senate Bill No. 311 repealing the equity of redemption as to the third and subsequent sale, leaves the right of two years redemption, under the provisions of said Section 9956a, available with reference to the first and second offerings or sales. The two years redemption as to such first and second offerings or sales is unaffected by Senate Bill No. 311 except that such redemption is limited in case of a third or subsequent sale thereunder."

In an opinion rendered by this department to Hon. Henry C. M. Lamkin, Prosecuting Attorney of Callaway County, on October 28, 1939, it was held that:

"It is, therefore, the conclusion of this department that, a certificate-holder at a third sale under the provisions of Senate Bill No. 94, Laws of Missouri 1933, is entitled to a deed and possession after the redemption period unless he fails to pay subsequent taxes and permits the property to be sold under the provisions of Section 9953a, Senate Bill No. 311, Laws of Missouri 1939, at page 851, and in such event he loses all rights obtained under the certificate of purchase."

Section 9957, Laws of Missouri, 1933, at page 438, is in part as follows:

"If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyor, the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold.* * *"

The conclusions reached in the above two opinions, that third sales under the provisions of Senate Bill No. 94, Laws of Missouri, 1933, made prior to the effective date of Section 9953a, Senate Bill No. 311, Laws of Missouri, 1939, at page 851, which repealed the third sale provided by Senate Bill 94, were not affected by said Senate Bill 311 with reference to making such sales final, were reached on the basis that, to impose the finality of a third sale provided in said Senate Bill 311 in 1939, upon a third sale made under said Senate Bill 94, passed in 1933, which provided redemption from such third sale, would construe said Senate Bill 311 to be retroactive and, therefore, unconstitutional.

Senate Bill 311, repealing Secs. 9953a and 9953b of Senate Bill 94, Laws of Missouri, 1933, is a procedural law for the collection of delinquent taxes on real estate. Such statute comes under the rule stated by the court in State ex rel. V. Hackman, 272 Mo. 600, 607, which is as follows:

"As a general rule, a statute expressly repealed is thereby abrogated and all proceedings commenced thereunder which have not been consummated are rendered nugatory unless the repealing act is modified by a saving clause. * * * * * Although there was an express repeal of the former statute the immediate reenactment of same, except as to the changes noted, left, so far as the practical application of the law is concerned, the same power in the county court. Under these conditions, although the latter law does in terms repeal the former, the effect is not to be ascribed to it of annulling all proceedings commenced when the former law was in force. The operative force of both laws being essentially the same, the latter may properly be construed to be a continuance of the former; and, it is only necessary to render the steps taken regular that subsequent proceedings are required to conform to the latter. (State ex rel v. Vernon County, supra)."

The action for sale of real estate for delinquent taxes provided in said Senate Bill 311 is summary, but follows due process and is equivalent, with reference to conveying rights, to a judgment and sale in a plenary proceeding. Therefore, a sale had under such proceeding would follow the rule, as to procedure, laid down in the case of *Mayhew v. Todisman*, 151 S.W. 436, 438, which is as follows:

"(1) This suit is, by the averments of the petition, founded expressly upon the provisions of section 650 of the Revised Statutes of Missouri 1899. The judgment from which the appeal is taken was entered in 1908, and is consequently unaffected by the amendment of 1909.* * *"

Hon. Harold Fenix,

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Feb. 16, 1940.

CONCLUSION.

Therefore, it is the opinion of this department that lands sold at a general delinquent tax sale on the third publication in the years of 1937 and 1938, were sold under the provisions of Senate Bill 94, Laws of Mo. 1933, and that Senate Bill 311, Laws of Mo. 1939, making the third sale final, does not affect sales so made on the third publication for said years, with reference to making such sales final. It is further our opinion that tax deeds should only issue in such sales under the provisions of Sec. 9957, supra, after the certificateholder has met all other requirements of said Senate Bill 94.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney-General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

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