

TAXATION AND: Failure of certificate holder to have executed
REVENUE : and recorded a deed within four years from the
date of sale, under the provisions of Section
9954c causes the amount due such purchaser to
cease to be a lien on the lands and lots for
the particular years involved.

March 8, 1940

Mr. W. A. Holloway
Chief Clerk
Auditor's Office
Jefferson City, Missouri



Dear Mr. Holloway:

We desire to acknowledge your request for an opinion on March 2, 1940, which is as follows:

"The question has been raised concerning the rights of a county collector to issue a deed to the holder of a certificate of purchase. The question depending upon the construction of Section 9954c as found on page 435, Laws of Missouri, 1933. Can a deed be issued now on a tax sale certificate dated November 13, 1935? If not, does the property revert to the original owner and if so what recourse, if any, has the purchaser of the certificate."

Section 9956a Laws of Missouri 1933 at page 437 is in part 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 per centum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum 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. * * * * *

After the two years period of redemption the certificate holder may obtain a deed under the conditions provided in Section 9957 thereof, at page 438, which 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. * * * * "

Under the provisions of Section 9957c thereof, at page 440, the certificate holder forfeits his right of priority to the subsequent purchaser in event he does not keep subsequent taxes paid, and thereby suffers the lands and lots to be offered for such subsequent taxes and a certificate to issue for the same. Said section being in part as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for deed, and any purchaser that shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property included in his certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser, * * * * *

and

" * * * * Said holder of a certificate of purchase permitting a subsequent certificate to issue on the same property, shall, on notice from the county collector, surrender said certificate of purchase on payment to him of the redemption money paid by the subsequent purchaser."

In event a certificate holder gets possession, at anytime after one year from the date of sale, during the redemption period unless sooner redeemed, under the provisions of Section 9954a thereof, at page 434 and fails to pay the taxes provided in Section 9954b thereof, at page 435, or commit waste upon the occupied premises he shall suffer the forfeiture of rights mentioned in said Section 9954b, which is as follows:

"Any purchaser at delinquent tax sale of any tract or lot of land, his heirs or assigns, who takes possession of any tract or lot of land within the redemption period shall be required to pay the taxes subsequently assessed on such tract or lot of land during the period of occupancy and within the redemption period, and upon fail-

ure so to do, or if he commit waste thereon, such purchaser, his heirs or assigns, shall forfeit all rights acquired by his certificate of purchase, so far as the tract or lot of land taken possession of is concerned."

Under the provisions of Section 9954a supra, the tenants rights are established and provision made that the certificate holder, in possession, must apply the rent as payment on the certificate. The rights, of such purchaser in possession within the redemption period in and to planted, growing or unharvested crops are to be protected in the same manner as such purchasers would be protected in lasting improvements made upon said lands after the period of redemption and referred to in Section 9956c thereof, at page 437 which 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 thereof 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."

Such are the rights and duties of the certificate holder under Senate Bill 94, Laws of Mo. 1933. He may not obtain a deed thereunder until after the redemption period of two years and then only by compliance with the above statutes. After such period he may obtain a deed by performing his other statutory duties.

Under the above statutes he may have possession of the premises after one year and could after two years, make valuable and lasting improvements on the premises and require payment therefor as a prerequisite to redemption.

In the case of Hilton v. Smith, 33 S. W. 464, 466 in construing the right of a certificate holder under a similar statute the court held:

" * * * After the period allowed for redemption has expired, as was the case here, the holder of the certificate has a mere naked right to demand and receive a deed from the collector. * * * "

With such right how long should the certificate holder be permitted to collect rents and charge the property with improvements? Certainly there should be a limitation placed thereon. So, with this in view, the legislature passed Section 9954c at page 435 of the laws of Mo. for 1933, which is as follows:

"In all cases where lands have been or may hereafter be sold for delinquent taxes, penalty, interest and costs and a certificate of purchase has been or may hereafter be issued it is hereby made the duty of such purchaser, his heirs or assigns, to cause a deed to be executed and placed on record in the proper county within four years from the date of said sale: Provided, That on failure of said purchaser, his heirs or assigns so to do, then and in that case the amount due such purchaser shall cease to be a lien on said lands so purchased as herein provided."

This section is clear. It means that the certificate holder must have his deed executed and recorded "within four years from the date of sale" which of course means: four years after the date of sale evidenced by the certificate of sale. The lien for taxes is in rem and a charge only against the land. Under the above proviso the certificate holder failing to cause such deed to be executed and recorded within such time suffered the loss of the lien for which the land was sold and he received the certificate of purchase. Therefore, his rights under the certificate were forfeited because of his own failure to exercise such "naked right" received thereunder.

March 8, 1940

CONCLUSION

Therefore, it is the conclusion of this department that the holder of certificate of purchase issued by the collector after advertisement and sale for delinquent taxes on real estate, under the provisions of Senate Bill #94, Laws of Mo. for 1933 at page 425, failing to cause a deed to be executed and recorded within four years from the date of such sale, by such failure, caused the amount due such purchaser to cease to be a lien on the lands described in the certificate and thereby he lost all rights thereunder, leaving the lands and lots in statu quo as to the tax liens for the particular years involved.

It is further our opinion that a collector may not now execute and record a deed to a holder of a certificate of purchase nor his assignee upon a certificate issued November 13, 1935 by reason of such statute of limitations.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

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