

TAXATION AND: 1. Trustee may bid up to total amount of taxes,
REVENUE : interest, penalties and cost.
2. County court may not, by order, control
trustee in bidding.

February 23, 1940.

Honorable John W. Mitchell
Assistant Prosecuting Attorney
Buchanan County
St. Joseph, Missouri



Dear Mr. Mitchell:

We rendered you an opinion on October 19, 1939, which has been withdrawn and in lieu, thereof, are rendering an opinion on your inquiry of October 14, 1939, said inquiry being as follows:

"At pages 851 and 852 of the Session Acts of 1939 by Section 9953b the legislature provided authority for the counties to appoint a trustee to bid in property in event such property had been previously offered for sale twice and in the event no one at such previous sales or at the current sale should bid the total amount due for taxes, penalties and costs.

"I do not find any specific provisions covering the extent of the power and authority of such a trustee to take possession of and rent such property as may be purchased by him as trustee. The statutes appear to give anyone who purchases property at either the first or second offering of a tax sale the right to rent and manage the property after the first year has elapsed from date of purchase subject to certain restrictions.

"It is to be noted that Section 9953a, found on page 851, expressly provides

that there shall be no redemption after a purchase made at the third offering. Consequently, a purchaser at such a sale has the right, clearly, to the immediate possession and control under the premises, so far as the title holder is concerned. Off hand there does not appear to be any reason why, under the statutes, the trustee should not have the same right, by necessary implication.

"On the other hand there is no specific authority given to the trustee to do anything with the property except to sell it on order of the County Court.

"I should like your opinion as to the nature and extent of the powers of the trustee with respect to the control and management of the property which he bids at tax sales from the time he becomes the purchaser of same until they are disposed of according to law.

"I should also like to have your opinion as to whether the trustee may lawfully bid any less for a given property than the total amount of the taxes, penalties, interest and costs charged against it.

"I should also like to have your opinion as to whether under the provisions of the first sentence in Section 9953b, the County Court would have the power to control by appropriate orders the amount of the bids to be made by the trustee on various properties. In other words is the jurisdiction of the County Court confined to the appointment of the trustee, or having appointed him may the Court also direct the trustee to refrain from bidding on some properties, and to bid on others for certain amounts only?"

I.

Section 9953b, Laws of Missouri 1939, page 851, 852 is, in part, as follows:

"It shall be lawful for the County Court of any County, * * * to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which 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. * * * 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." (Underscoring ours)

CONCLUSION

Therefore, it is the opinion of this department that, under the provisions of the above statute, the trustee or trustees may use their discretion in bidding on such lands and lots and that the only prohibition from bidding, on such lands and lots, is when any person bids a sufficient amount to pay in full all delinquent taxes, penalties, interest and costs.

II.

Section 9953b, supra, is, in part, as follows:

"It shall be lawful for the County Court, * * * to designate and appoint a suitable

person or persons with discretionary authority to bid at all sales * * * . All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustees upon order of the County Court * * * . Upon appointment of any such person or persons to act as trustee * * * a certified copy of the order making such appointment shall be delivered to the collector, and if such authority be revoked a certified copy of the revoking order shall also be delivered to the collector. Compensation to the trustees * * * shall be fixed by the authorities hereinbefore designated * * * ."

The county court may therefore use its discretion in the appointment of a trustee or trustees, in ordering the property sold and fixing the fee of the trustee, within the limit provided by the statute, but said statute specifically vests in the trustee or trustees "discretionary authority to bid at all sales to which Section 9953a is applicable".

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

"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."

To like effect, see State ex rel. Publishing Co. v. Hackmann, 314 Mo. 33, decided by the Supreme Court en banc in 1926, where the court said:

"The Legislature must be intended to mean what it has plainly expressed, and consequently there is no room for construction."

Hon. John W. Mitchell

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CONCLUSION

Therefore, it is the opinion of this department that the trustee or trustees appointed under the provisions of Section 9953b, supra, have discretionary authority to bid on all sales to which Section 9953a is applicable as statutory trustee or trustees and in such bidding may not be controlled by order of the County Court.

Respectfully submitted,

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APPROVED:

W. J. BURKE
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SVM:LB