TAXATION AND REVENUE: Collector may make record of redemption of certificate when redemption thereof is made and the certificate holder has no further interest therein.

November 28, 1940

12-2

FILED 98

Honorable Conn Withers
Prosecuting Attorney
Liberty, Missouri

Dear Mr. Withers:

We desire to acknowledge your request for an opinion, which is as follows:

"This is to request the opinion of your Department on a matter which might involve expenditures to be audited under the County Audit system which require the interpretation of your Department. The facts upon which the opinion is requested are contained in a letter addressed to me by the County Collector of Clay County, Missouri which reads as follows:

'Dear Sir:

On November 7, 1938, I offered for sale various properties for delinquent taxes and sold same as provided for in Section 9953A of the 1933 Session Acts. These properties having been advertised and offered at the 1936 and 1937 sale and no bid sufficient to pay the total amount of taxes and cost being received, they were again advertised and offered in 1938 and sold to the highest bidders and certificates of purchase issued thereon.

In various cases the owners of properties have redeemed these outstanding certificates as provided for in Section 9953B of the 1933 Session Acts.

One of the holders of said certificates of purchase refuses to surrender said certificates held by him, even though he has been notified by registered mail of the redemption of the said certificates, contending

that he has a lien on properties covered by said certificates of purchase until all taxes that were charged against these properties are paid.

Citing three specific redemptions of properties as sold under Section 9953A and redeemed under Section 9953B as to how these properties were redeemed, I give the following:

(1) Certificate of Purchase No. 556 was issued under Section 9953A on a bid of $2.00 covering property that had unpaid taxes amounting to $255.15. That Certificate of Purchase was redeemed under Section 9953B by the owner and he then appeared before the County Court and secured a compromise on the delinquent taxes on the grounds that the property was not worth the amount of taxes, penalties, interest and cost delinquent thereon.

(2) Certificate of Purchase No. 537 was issued under Section 9953A on a bid of $1.00 covering property that had unpaid taxes amounting to $55.24 due thereon. The owner redeemed this Certificate of Purchase and paid all delinquent taxes due thereon at the time of redemption.

(3) Certificate of Purchase No. 552 was issued under Section 9953A on a bid of $1.00 covering property that had unpaid taxes amounting to $302.43 due thereon. The owner redeemed this Certificate for its face value on October 11, 1940, and as yet has not paid the remaining amounts due that were not paid by the proceeds of the sale.

In each case of redemption the owner of the Certificates of Purchase has been notified by registered mail of said redemption and requested to surrender said certificates to this office and be paid the original price plus interest, as provided for in the

Certificate, figured from the date of the sale to the date of redemption, but in each case, has refused to surrender said certificates.'

"I am hereby requesting an opinion as to whether or not I am in a position to start proceedings in an effort to force the holder of these certificates to surrender same and, if so, what procedure should be followed and who is responsible for the cost of said proceedings."

In answer to the above opinion we are enclosing you an opinion rendered by this Department to Mr. Charles S. Greenwood, Prosecuting Attorney of Livingston County, on November 25, 1940.

The above opinion merely passes on the question as to the rights of the County Court in compromising delinquent taxes on real estate prior to the offering of such lands for sale, and after such lands have been sold and redeemed from a third sale.

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 percentum 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. Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his

heirs or assigns, at the last postoffice address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time."

Section 9956d thereof is as follows:

"When lands sold for taxes, or any portions thereof, shall be redeemed, the county collector shall insert a memorandum of such redemption on the record of the certificate of purchase applicable thereto, stating the quantity or description of the portion redeemed, if not the whole, the date thereof, and by whom made, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming. The person redeeming shall then present to the county clerk the certificate of redemption and the county clerk shall then enter on his record of sales of land for delinquent taxes the recital of such redemption, the date thereof, and the person redeeming."

The right of the certificate holder in such sale has been passed on by the Supreme Court of this State, which construed a summary law similar to the present summary delinquent tax law.

In the case of Hilton v. Smith 134 Mo. 499, 509, 510, the court laid down the following rule with reference to the rights of the certificate holder:

"At the time the back tax suit was commenced interpleader Smith held certificates of the purchase of the land at collector's

sales for taxes levied for the years 1874 and 1875. The time allowed by the law (Wag. Stat., p. 1202, sec. 208) in which the owner could redeem had expired and he was, and for some time had been, entitled to a deed.

"What title to, interest in, or lien upon land a certificate of purchase secures to the holder is a question upon which there is a difference of opinion. It may be said generally that the right is no larger than the statute gives. The law of 1872 only gives the right to the redemption money in case the land is redeemed, and to a deed when the time of redemption has expired.

"In the absence of provisions of law defining the rights of the holder of a certificate of purchase the generally accepted rule is that, until the delivery of a deed, he takes no title to the land, either legal or equitable. Black on Tax Titles, sec. 322; Burroughs on Taxation, p. 321.

"The rule is announced by this court in Donohoe v. Veal, 19 Mo. 335, 336, as follows: 'If the law did not propose to give the purchaser the title to the land until two years should elapse from the time of the purchase, then it did mean that the title should remain in the owner for that period, and the right of the purchaser was to receive his money, with a high penal interest, during the delay of redemption. It appears very clearly to be the design of these two acts, that the title of property sold for taxes shall remain undisturbed, until the deed is actually executed by the register; and that, until that act is performed, the title is in the former owner.' * * * *

"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. The law thereafter gives him no lien upon the

land for any sum, except that, in case his title fails, he may secure a lien under section 219, 2 Wagner's Statute, page 1206. Pitkin v. Reibel, 104 Mo. 511.

CONCLUSION

Therefore it is the conclusion of this Depa t-ment that the holder of a certificate issued at a sale of lands for delinquent taxes, having a mere naked right to demand and receive a deed from the the Collector after the period of redemption, when redemption is made within the time and in the manner provided by statute, such naked right ceases and the Collector has no duty other than to make a record provided in Section 9956d, supra. When such record is made by such Collector the certificate holder has no right to any further claim of interest in and to the real estate for which the sale was had.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General.

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

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