

TAXATION: Certificate holder, his heirs or assigns must procure a deed to property and have the same recorded within four years from date of issuance of such certificate.

November 12, 1941

11-13

Hon. E. W. Bennett
Assistant Prosecuting Attorney
Salem, Missouri



Dear Mr. Bennett:

This is an acknowledgement of your request for an opinion of November 8, 1941, which is as follows:

"The County Collector of this Dent County has requested that I get your opinion on a matter pertaining to his official duties as County Collector.

"It appears that on November 4, 1936; a certain party purchased at Auction, a forty (40) acre tract of land and a certificate of purchase was issued for such.

"This party never tendered payment for subsequent taxes and never demanded a deed until November 7, 1941.

"In the meantime the party who claims said tract on August 20, 1941 pays all subsequent taxes then due, namely for the years 1936, 1937, 1938, 1939 1940 and 1941.

"Now purchaser of the tax certificate has presented his certificate of Purchase demanding that the County Collector issue a deed to him and threatens suit. The County Collector desires your opinion as to what steps to take, as soon as possible."

Section 11137 R. S. Mo. 1939 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."

The right of a certificate holder is defined in the case of City of St. Louis v. Baumann 153 S. W. (2d) 31, 34, in the following language:

"We have previously passed on the office of a certificate of purchase and held that it alone did not pass title for the obvious reason title to land sold for taxes under the law of this State remains in the owner during the period of redemption. See Donohoe v. Veal, 19 Mo. 331; Kohle v. Hobson, 215 Mo. 213, 114 S. W. 952. In Hilton v. Smith, 134, Mo. 499, 33 S. W. 464, 466, 35 S. W. 1137 the period of redemption had elapsed but the holder of the certificate of purchase had never called for a deed and in interpreting the statute there under consideration in order to determine who was included within the term owner, we held that only a record owner was intended. We did say '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.' Granted that he has this right, there must be some interest vested in him to sustain it.* * *

"Under the act we are considering, a holder of a certificate of purchase is qualified to take a deed when the period of redemption has run. In effect the act vests the holder of a certificate of purchase with an inchoate or inceptive interest in the land which may ripen into such an estate as would entitle him to a deed. After the period of redemption has passed without the owner redeeming, upon producing his certificate, the holder is such an

owner as may call in the legal title. All that is necessary for him to accomplish this is to pay such taxes as are then against the land. He has already paid the purchase price as his certificate of purchase evidences.

"The right to call in the legal title ordinarily presupposes an equitable title in the person who may exercise the right. * * * The act permits the application of this rule in this case. Therefore, the City is now vested with the equitable title to the land and the land is not subject to taxes." * * *

The equitable right obtained under a certificate of title issued upon the sale of lands for delinquent taxes is so obtained by virtue of an ancillary action of foreclosing the lien of the state for such delinquent taxes. The legal title must be obtained and recorded within four years from the date of such sale; otherwise, the foreclosed lien of the state, by such ancillary action--which is the foundation of the equitable title--ceases to be a lien against the land and therefore the equitable title also ceases.

Therefore, it is our opinion that a certificate holder, his heirs or assigns, failing to cause a deed to be executed and recorded for the land described in such certificate within a period of four years from the date of sale, the lien on said land so purchased ceases and the equitable right of the certificate holder also ceases.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

SVM/aw