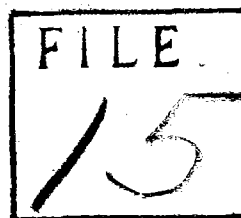


TAXATION AND REVENUE: Right of redemption of owner
after two year redemption
period.

✓ 1/12
August 28, 1941

Mr. W. H. Carney, Collector
Phelps County
Rolla, Missouri



Dear Mr. Carney:

We desire to acknowledge your letter request-
ing an opinion in regard to the Jones-Munger law, on Aug-
ust 26, 1941, which is as follows:

"I have a matter that has come up here in
which I am asking for an opinion from your of-
fice construing the Jones-Munger Tax Law.

"On the first Monday in November, 1937 I
held a sale as required under this law on de-
linquent land for taxes. At that sale, there
was a tract of 120 acres of land sold for the
back taxes amounting to \$164.35. The pur-
chaser bought the land for \$2.50. A certifi-
cate was issued to him calling for a deed at
the expiration of two years. At the end of
two years, he did not present his certificate
for his deed. Recently the owner of this land
appeared and offered to redeem the land from
the sale of taxes. He deposited with me the
amount of the bid together with the interest as
required by the statute and I notified the
holder of the certificate who had not yet pre-
sented his certificate for a deed and he refused
to accept the amount deposited with interest
and is now demanding his deed.

"Section 11,137, Revised Statutes of 1939
provides that in 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 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. This said statute provides that on the failure of such purchaser, his heirs or assigns to do so, that the amount due the purchaser shall cease to be a lien on the lands purchased.

"Section 11,145, Revised Statutes of Missouri, 1939 provides that the owner or occupant of any land or lands sold for taxes or any other person having an interest in said lands 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 costs together with interest not to exceed 10% annually and that he shall deposit the amount of money necessary with the Collector and it shall be the duty of the Collector to give the purchaser or his heirs or assigns notice of such deposit.

"The latter part of these sections provides, however, that in case the party purchasing such land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of two years following the sale, no interest shall be charged or collected from the redemptioner after that time.

"The owner of the land contends that he had a right to redeem this land at any time after two years until there was a deed issued on the certificate. On the other hand, the purchaser contends that he had a right to call for his deed at any time within four years. The purchaser has refused to accept the deposit made by the owner and is demanding a deed from

me while the owner is demanding that he be given a certificate of redemption.

"I would appreciate it very much if you would give me an opinion as to these two statutes above quoted and as to what course I should pursue in this matter."

Section 11137 Revised Statutes of Missouri, 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."

Section 11145, thereof, is 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. 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."

The right of the certificate holder under the provisions of former procedural statutes for the enforcement of delinquent taxes on real estate is established by the Supreme Court of Missouri in the case of *Hilton v. Smith* 134 Mo. 499, 509 in the following language:

"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 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.' * * *

"The law of 1857 made the certificate prima facie evidence of title, yet the court held that it never intended to confer title; but was mere evidence of title authorizing the purchaser to take possession of the premises for a limited period. Clarkson v. Creely, 40 Mo. 114.

"In Parsons v. Viets, 96 Mo. 413, this court, in considering the rights of one holding a certificate acquired under a sale made pursuant to the laws of 1872, held that he acquired thereunder no right to the possession of the premises, and in taking possession he was a trespasser and disseizor.

"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."

Mr. W. H. Carney.

- 6 -

August 28, 1941.

While the appellate courts of this State have not passed on such question after the passage of the Jones-Munger Act, it seems that such reasoning is sound in its applicability to such summary procedural act.

CONCLUSION

Therefore, there being no statutory provision defining the property rights of a holder of a certificate of purchase, it seems that the rule is that, until the delivery of a deed, he takes neither a legal nor an equitable title in and to the land.

Therefore, until the delivery of such deed the owner would have the right of redemption in the manner provided by the statutes relating to such subject.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General.

APPROVED:

VANE C. THURLO
(Acting) Attorney General

SVM/mc