

TAXATION: Surplus from general county and state tax sales should be paid to party or parties having the title or interest in and to the realty sold.

November 18, 1941

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



11-19

Dear Mr. Holloway:

This is an acknowledgement of your request for an opinion relating to the Jones-Munger Law, on November 14, 1941, wherein you enclosed a request from Mr. Ben W. Gallup, County Treasurer of Grundy County, which is as follows:

"We had several properties located in the City of Trenton that were being offered for a third time at our recent sale; some of these properties brought more than the amount of taxes, penalties and costs thereby creating an overplus.

"The City was also offering these properties in the City sale which was held immediately after ours but received no bids on the ones we had sold. I am under the impression that the City would have prior claim on this over-plus up to the amount of their taxes before the owner or any other claimant would be entitled to any part of it.

"Would you please advise me whether or not this assumption is correct."

Section 11109 R.S. Mo. 1939 is as follows:

"The taxes due and unpaid on any real estate which has heretofore been returned delinquent, and which has not been forfeited to the state, and the taxes due and unpaid on any real estate which has been forfeited to the state for the nonpayment of such taxes, shall be deemed and held to be back taxes, and the lien heretofore created in favor of the state of Missouri is hereby retained on each such tracts and lots of real estate to the

amount of the taxes due thereon, and also the interest and costs accruing under this chapter."

The lien for county and state taxes is a paramount lien. Little River Dr. West v. Sheppard 7 S. W. (2d) 1013. Dyer v. Harper 77 S. W. (2d) 106.

Section 11130 thereunder, is in part as follows:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell same to the highest bidder, and there shall be no period of redemption from such sales. No certificate of purchase shall issue as to such sales but the purchases at such sales shall be entitled to the immediate issuance and delivery of a collector's deed. * * *"

In the case of Jaicks v. Oppenheimer 264 Mo. 693, 698, the court held:

"As a prelude to what we shall say in this case, and because we concur in the conclusion of the Kansas City Court of Appeals as to the relative priority of the liens of tax bills for special assessments for public work in cities and towns, we herein copy the discussion of the Kansas City Court of Appeals, speaking through Judge Trimble:

"With regard to all ordinary liens arising out of private contract and not imposed solely by governmental power, priority in time creates priority in force and effect, the first in order of time being, prima facie, superior to those of a later date. But the priority of the liens of general taxes is in the reverse of this order, the last is first and the first last. (2 Cooley on Taxation (5Ed.) 875; Anderson v. Rider, 46 Cal. 134; Bayles v. Davis, 22 Wis. 225; Wass v. Smith, 34 Minn. 304.) This rule is well settled and is not disputed. * * *"
(underscoring ours.)

Therefore, general taxes, constituting a prior lien to other taxes on real estate and the last year thereof being

prior to other years, a foreclosure of the general tax lien under such third sale for particular years would foreclose the rights of junior lienors against the res, not only for such particular years, but for all former years.

Section 11132 thereunder is in part as follows:

"Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the collector, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises as to the proper person, the same shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto."

Section 11133 thereunder is in part as follows:

"* * * If the purchaser bid for any tract or lot of land a sum in excess of the delinquent tax, penalty, interest and costs for which said tract or lot of land was sold, such excess sum shall also be noted in the certificate of purchase, in a separate column to be provided therefor.* * *"

The back tax lien in favor of the state, which is provided in section 11109 supra, is a lien against realty and must be enforced under the provisions of what is commonly known as the Jones-Munger law, which provides for the foreclosure of such lien by summary action.

The surplus in such foreclosure proceedings must, under the provision of section 11132 supra, be paid to the person entitled thereto; or if the collector has doubt, or a dispute arises as to the proper person, he shall pay the same into the county treasury to be held for the use and benefit of the person entitled thereto.

In the case of *Holly v. Rolwing* 250 No. App. 33, a controversy arose as to who was entitled to a surplus in the hands of the sheriff. A drainage and levee district claimed the surplus as junior lienors. The sheriff filed a suit in the nature of interpleader asking the court to determine to whom such surplus should be paid.

On page 38 of said decision the court said:

"The appellants have dividèd their brief into several heads, but really there is only one point before us for consideration, and that is, who, under the facts agreed on, is entitled to this surplus fund? The districts contend that the surplus should be considered as realty, and that their liens which they admittedly had upon the land, should be construed by the courts to be upon the surplus.

"There is no question here as to the proper organization of the two districts, nor is there any contention but that the liens of the two districts were subject to and inferior to the lien for the State and county taxes."

On page 42 thereto the court held:

"As we read the statute with reference to collection of delinquent levee taxes we find no provision that would authorize such an action as herein brought that would establish a lien upon the surplus money left after a sale by the State for the collection of general taxes. Nor do we find any authority by the courts of this State that would authorize our so holding.

"Since there is no provision in the statute giving the drainage or levee districts the right to follow the surplus derived from a sale under a procedure to collect general taxes, and since the statutes do give to drainage and levee districts sufficient methods of procedure to protect their interest, if followed, it is our conclusion that the finding of the trial court was proper, and that this judgment should be affirmed."

Mr. W. A. Holloway

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Therefore, it is the opinion of this office that, a surplus arising from a general tax sale of lands in foreclosure of the state's lien for delinquent taxes for certain years, cannot be applied to the payment of delinquent taxes due a city for such years nor for any year or years prior thereto. Such surplus must be paid to the person or persons entitled thereto by reason of some interest or ownership in and to the realty sold under said procedure; or if the collector has doubt as to who is entitled thereto or a dispute arises as to the proper person, "the same shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto."

Respectfully submitted

S. V. MEDLING
Assistant Attorney General

SVH/aw

APPROVED:

Vane C. Thurlo
(Acting) Attorney General