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- TAXATION AND REVENUE: (1) Rights of a holder of a certificate of purchase issued by the treasurer of a city of the first class.
- (2) When county court may redeem lands from such sale.

October 17, 1941

Honorable John W. Mitchell
Ass't Prosecuting Attorney
Buchanan County
St. Joseph, Missouri



Dear Mr. Mitchell:

This is in reply to your letter of October 14, 1941, requesting an official opinion of this Department based upon the following letter:

"I should like your opinion as to the following matter:

"If property covered by a School Fund Mortgage is sold by the city of St. Joseph for delinquent taxes and thereafter the School Fund Mortgage is foreclosed and the property bid in by the county, does the holder of the tax sale certificate issued by the city of St. Joseph have an enforceable lien against the property; and is the county legally justified in redeeming the property from the tax sale?"

We presume, from the context of your letter, that the two year period of redemption has not expired since the sale by the city. Also that the county court purchased the property at foreclosure for the use and benefit of the Capitol School fund, under the provisions of Section 10389 Revised Statutes of 1939.

Section 6328, Revised Statutes of Missouri, 1939, relating to the lien on real estate for taxes due a city of the first class is in part as follows:

"On the first day of September in each year the unpaid taxes shall become delinquent, and shall bear interest from that date at the rate of twelve per centum per annum, and taxes upon real property are hereby made a perpetual lien thereon against all persons. The city treasurer is hereby authorized and directed to collect the delinquent taxes by the sale of the real property upon which the taxes are levied. The city treasurer shall continue to receive taxes after they become delinquent until collected by distress or sale."

Under the provisions of Article 2, Chapter 38, Revised Statutes of Missouri, 1939, cities of the first class have a complete scheme of procedure in the collection of delinquent taxes on real estate, which was unaffected by the enactment of Senate Bill 94, Laws of Missouri, 1933, commonly known as the Jones-Munger Law.

Redemption sections, under the statutory scheme relating to cities of the first class, are Sections 6342 and 6347, which are as follows:

"Section 6342. Real property sold under provisions of this article, or any interest in such real property, may be redeemed by the owner, his agent or attorney at any time within two years from the first day on which such real property was advertised for sale, or at any time before the execution and delivery of the tax deed to the purchaser at the tax sale, his heirs or assigns, by the payment to the city treasurer of the amount for which such real property was sold, and ten per centum of such amount immediately added as a penalty, with twelve per cent interest per annum on the whole amount thus made from the day of sale; and also the amount of all taxes, state, county or municipal, general or special, paid by the purchaser, his heirs or assigns, after the date of the cer-

tificate of purchase, and a like penalty of ten per centum added as before on the amount of each of such payments, with twelve per cent interest per annum on the whole of such amount or amounts from the day or days of payment."

"Section 6347. Any person desiring to redeem any real property bid off for the city for delinquent taxes at any tax sale may redeem the same by the payment to the city treasurer of all taxes, interests and costs due thereon. In any case where any person shall redeem more than one parcel of real property at the same time, he may require the city treasurer to include the same in one certificate of redemption."

Section 6350 therein, providing for a deed to be made if the property is not redeemed in two years, is in part as follows:

"If any real property sold for taxes under the provisions of this article shall not be redeemed within two years from the first day on which it was advertised for sale, it shall be the duty of the city treasurer, on presentation to him of the certificate of purchase, to execute, in the name of the city, under his hand and the seal of the city, to the purchaser, his heirs and assigns, a deed of the real property described in such certificate of purchase remaining unredeemed, as shown by such certificate of purchase, and shall acknowledge such deed and deliver the same to the grantee, which deed shall vest in the grantee an absolute estate, in fee simple, in the real property described therein, free from any and all encumbrances of whatsoever kind or nature, subject, however, to all unpaid taxes which are a lien thereon."

The rights of a certificate holder and redemptionor, under the summary Jones-Munger law, was determined

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by the court en banc in the case of the State ex rel:
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 Milton v. Smith, 134 Mo. 499, 53 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 reasoning of the court in the above decision, based upon a summary law for the enforcement of delinquent state and county taxes on real estate, is applicable to the summary procedure provided for cities of the first class under the statute.

Under the above statutory provisions, land and lots may be redeemed within two years, and such right could be exercised by the county court as trustee of school funds if it were given the right and power of redemption under the statute creating its trusteeship for such fund.

Section 10389, Revised Statutes of Missouri, 1939, is as follows:

"Whenever any property heretofore or hereafter conveyed in trust or mortgaged to secure the payment of a loan of school funds shall be ordered to be sold under the provisions of this chapter, or by virtue of any power in such conveyance in trust or mortgage contained; the county court having the care and management of the school fund or funds out of which such loan was made may, in its discretion, for the protection of the interest of the schools, become, through its agent thereto duly authorized, a bidder, on behalf of its county, at the sale of such property as aforesaid, and may purchase, take, hold and manage for said county, to the use of the township out of the school fund of which such loan was made, or in its own name where such loan has been made out of

the general school funds, the property it may acquire at such sale aforesaid. The county court of any county holding property acquired as aforesaid may appoint an agent to take charge of, rent out or lease or otherwise manage the same, under the direction of said court; but as soon as practicable, and in the judgment of said court advantageous to the school or schools interested therein, such property shall be re-sold in such manner and on such terms, at public or private sale, as said court may deem best for the interest of said school or schools, and the money realized on such sale, after the payment of the necessary expenses thereof, shall become part of the school fund out of which the original loan was made."

In discussing the relation of the county court to the school funds and its powers and duties in relation thereto, the court in the case of *Ray County, to the use of the Common School Fund v. Bentley et al.*, 49 Mo. l. c. 242, said:

"* * * The county is not the owner of the fund; the title is simply vested in it as trustee, for convenience, to carry out the policy devised by the law-making power for the appropriation and distribution of the fund. In the care, management and control of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the performance of a duty specifically devolved upon it by the laws of the State. There is nothing judicial in the exercise of its functions in this respect. The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State law, independently of the county. Where it acts, for and binds the county

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it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. * * *

In Walker v. Lynn County, 78 Mo. 650, the court held, that a contract of insurance on county buildings, procured by an agent, verbally appointed by the county court, is a valid contract, when subsequently ratified, adopted and approved by an order of the county court entered of record.

The Supreme Court in the case of Morrow v. Pike County 189 Mo. 622, recognized the right of the county court to employ counsel to aid in protecting a public school fund in the following excerpt:

"The county court properly placed the burden of protecting this fund upon the fund itself and this arises from the following propositions: the public school fund does not belong to the county in a technical sense. It is a trust fund, and the county court is merely a trustee to carry out the policy defined by the lawmaking power in relation to the fund (Ray County to use vs. Bentley, 49 Mo. l. c. 242); it may not divert the general county revenue to its protection, and, on the other hand, it cannot apply the school fund to the payment of ordinary county debts. (Knox County vs. Hunolt, 110 Mo. l. c. 75.) But it is fundamental that, conceding the right to make the contract in question, the burden of protecting the trust fund shall fall upon the fund itself on well-recognized equitable principles."

In that case there was no claim that there was any statute which expressly gave the county court power to employ such an attorney in such capacity but the court held that the county court had implied authority to order

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such expenditure to protect the funds of the school district and further held that the payment for such services must be made from the school funds.

In the case of Township Board of Education v. Boyd, 58 Mo. 276, the county court was trustee for the care and management of the school fund of the township. It instituted certain injunction proceedings for the protection of the fund and gave an injunction bond signed by J. K. Boyd and J. B. Johnson, two of the justices of the county court. Upon dissolution of the injunction a judgment was issued against said obligors, one of whom, paid the same, and by a court order he was reimbursed out of the township school fund. In this case the court said:

"The County Court was a trustee for the 'care and management' of the school fund of the township. In this capacity, and in the exercise--for aught that appears to the contrary--of its soundest judgment and discretion, it instituted certain injunction proceedings for the protection of the fund. The law required personal security for the purpose, which was given. A judgment against the surety following, which judgment he was bound to pay, and did pay, it would be strange if the law should refuse to indemnify him for the interest which his suretyship had so served at a sacrifice."

There being no statute expressly giving the county court, as trustee for such school money, the power to redeem from a tax sale, lands and lots which it repossessed under the provisions of Section 10389, supra, subsequent to the sale, the question is, whether said court would have such implied right and power as may be necessary to carry out or make effectual the purposes of the authority expressly granted.

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A trustee always has the implied right to protect the corpus of the property or funds under their control and in such cases the court would have the right to take necessary steps to enjoin the stealing of timber from valuable wooded land belonging to a school district and not rely on the criminal statutes for a remedy; to employ an attorney to replevy timber wrongfully taken from such premises and the like.

In the case of Lincoln County v. Magruder, 3 Mo. App. 314, the County Court brought a suit of ejectment for the possession of land which had been bid in and purchased by said court, for the use of the townships whose school funds were secured by the mortgage. The court held;

"We see no reason why the County of Lincoln should not bring ejectment for real estate which it owns and holds and in which it is entitled to possession."

In the case of Drainage District v. Metlage 231 Mo. Ap . 355, 366, the court held that a county court had no implied right for and in behalf of a drainage district organized under such county court, to redeem lands and lots sold at a general state and county tax sale.

The rationale of such decision is as follows:

"The fact that in 1927 the Legislature by amendment added Section 10766, conferring such power upon circuit court districts without granting similar power to county court districts, denies, by implication, the right of county court districts to redeem from sale for State and county taxes. Especially is this true since prior to said amendment circuit and county court drainage districts had almost identical powers.

Sec. 1102, Vol. II, Revised Statutes Missouri 1929, cited by appellant, reads in part as follows: 'Drainage or levee districts heretofore or hereafter incorporated under any of the drainage or levee laws of this State where lands are offered for sale for their own taxes (italics ours) or assessments due thereon, shall be and are hereby authorized to buy such lands at not to exceed the amount of such taxes, assessments, interest, penalties and costs.'

"It also further provides, among other things, for the sale of lands so purchased, but nowhere does it say anything whatever about the right to redeem from State and county taxes. Since this section confers power to bid at a sale for the district's own taxes, but is silent as to the right to bid at a sale for State and county taxes, the presumption is that the Legislature intended that the district should not have the power to bid as to State and county taxes. (Deitrich v. Jones et al., 56 S. W.(2d) 1059; Chilton v. Drainage District No. 8, 63 S.W. (2d) 421.)

"As insisted by respondent, the maxim 'Expressio unius est exclusio alterius,' is applicable. (Keane v. Stroetman, 18 S. W. (2d) 896.) Applying the maxim to the facts in the case before us, the conclusion follows that the grant of the right to bid at sales for taxes due Drainage District No. 23, by implication, excludes the right of the district to bid at a sale for State and county taxes, or to redeem therefrom."

The quoted decisions, preceding the Drainage District case, clearly construed the legislative intent to vest in the county courts implied rights, with reference to the Capitol School fund, although it seems to restrict such implied rights to the protection of the corpus of the property or funds under their control.

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Therefore, the maxim expressio unius est exclusio alterius is certainly inapplicable to the right of action of a county court in using its soundest judgment and discretion in protecting the corpus of the property or funds under its control as trustee of the Capitol School fund.

CONCLUSION

Therefore, it is the opinion of this Department that the holder of a tax certificate of purchase issued by the city treasurer of a city of the first class - wherein the City of St. Joseph is classified - has an inchoate or inceptive interest in and to the property described therein "which may ripen into such an estate as would entitle him to a deed." That the county court, in the exercise of its best judgment and discretion, may, within the redemption period, redeem such lands for and in behalf of the school fund, if such action be necessary for the protection of the corpus of the property or funds under its control.

Respectfully submitted,

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APPROVED:

VANE C. THORLO
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