

TAXATION AND REVENUE: (1) Nonresident owner may, through a legally constituted attorney in fact, redeem his land sold under the Jones-Munger law, within the statutory period of redemption.  
(2) Answered by an opinion rendered to Mr. Bryan A. Williams, Prosecuting Attorney, Marble Hill, Missouri.

April 22, 1941

Honorable Russell D. Roberts  
Prosecuting Attorney  
Adair County  
Kirksville, Missouri



Dear Mr. Roberts:

We desire to acknowledge your request for an opinion on April 15, 1941, which is as follows:

"Our local Collector desires an opinion on the following questions:

"I. If a non-resident owner of a tract of land offered and sold at an Annual Tax Sale executes a power of attorney authorizing the redemption of such tract by an attorney in fact, does such power of attorney grant authority to the County Collector to issue a Certificate of Redemption, of lands thus offered and sold at an Annual Tax Sale?

"II. If a tract of land is sold at an Annual Tax Sale and the party to whom such tract was assessed executes a deed of conveyance on same during the two year period of redemption to a party other than the party that holds a Certificate of Purchase issued by the County Collector, does a County Collector have authority under the Statutes of the State of Missouri to issue Certificate of Redemption to party to whom such tract was assessed and sold at an Annual Tax Sale."

We are presuming that the second part of your inquiry might be clarified by marking out the words "assessed and" and "at an annual tax sale" and adding the words "by such owner" in the last line thereof so that the last line of such inquiry shall read as follows:  
"sold by such owner."

I.

Section 11145 R. S. Mo. 1939, relating to the manner of redeeming property sold for delinquent taxes on real estate 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."

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Section 11130 R. S. Mo. 1939, provides for final sale at a third offering of land for delinquent taxes, and from such sale there can be no redemption. Therefore, redemption lies only in case of first and second offerings of such lands.

The Jones-Munger law is a remedial or procedural law relating to the collection of delinquent taxes on real estate and, as such, it was not intended to nor does it affect laws of private contract relating to conveyances of real estate nor any interest therein.

Therefore, a resident or nonresident "owner or occupant of any land \* \* \* or any other persons having interest therein" may, invest proper agents with authority under lawful instruments to act in their behalf. Such agents should be recognized by a collector as agents of such interested parties for the purposes expressed in such instruments. Parties having the right to redeem themselves, may redeem through lawful agents, absent a prohibitory statute.

The right of the certificate holder is defined in *Hilton v. Smith* 134 Mo. 499, 509 as follows:

"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."

We are unable to find any provisions in the Jones-Munger statute that would make the above rule inapplicable.

CONCLUSION

Therefore, a nonresident owner of real estate in Missouri may, through his legally constituted attorney in fact, redeem his land sold under the Jones-Munger law for delinquent taxes within the statutory period of redemption.

Hon. Russell D. Roberts.

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II.

This inquiry, as clarified, is answered by an opinion rendered by this Department to Mr. Bryan A. Williams, Prosecuting Attorney, Marble Hill, Missouri, November 12, 1939, a copy of which is enclosed herein.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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Enc.