

TAXATION:

Surplus from sale of lands in foreclosure of delinquent tax lien must be paid to person entitled thereto. In case of doubt or dispute, such surplus must be paid into county treasury for benefit of person entitled thereto.

November 9, 1942

Mr. George O. Dalton
Collector of Marion County
Hannibal, Missouri

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Dear Mr. Dalton:

This is an acknowledgment of your request for an opinion, dated November 6, 1942, relating to a surplus resulting from sale of lands for delinquent taxes and which is as follows:

"I recently held my tax sale on November 3, 1942, and at that time, there was spirited bidding between two parties and the amount of the bid exceeded the taxes, interest and costs which was on the first sale. As there is now a surplus over the taxes, interest and costs, I am wondering what distribution to make of the same, as I have not had a similar case on the first sale.

"Will you please advise me as to this matter at your earliest convenience, I am, "

Section 11127, R. S. Mo., 1939, relating to a first sale or offering of lands in foreclosure of a lien for delinquent taxes on real estate, is in part as follows:

"On the day mentioned in the notice, the County Collector shall commence the sale of such lands, and shall continue the same from day to day until so much of

each parcel assessed or belonging to each person assessed, shall be sold as will pay the taxes, interest and charges thereon, or chargeable to such person in said county. The person offering at said sale to pay the required sum for the least quantity of any tract shall be considered the purchaser of such quantity: ***"

Section 11128 thereof is as follows:

"When more than one tract or lot belonging to the same person shall be for sale at the same time, in the same municipal corporation or township, a part of one of said tracts or lots shall be offered, first for the payment of the whole sum due from such owner on all such delinquent lands or lots, or otherwise; and if no person shall bid off a part of such tract or lot the sum required, the said tract or lot shall then be offered to the highest bidder for cash, and if any amount shall yet remain due, or if no person bid for a part or all of one tract or lot, each of the other tracts or lots shall be offered in like manner until the required sum is realized; and if no one bids upon a part or all of said tracts or lots separately, enough to pay the amounts due, then the whole of said tracts and lots shall be offered together and sold to pay the taxes, penalty, interest and costs thereon: Provided, however, this section shall be construed directory in character and a failure to comply therewith shall not of itself invalidate any sale." (Underscoring ours.)

Section 11132 thereof 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

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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. ***" (Underscoring ours)

Section 11133 thereof is in part as follows:

"After payment shall have been made the county collector shall give the purchaser a certificate in writing, to be designated as a certificate of purchase, which shall carry a numerical number and which shall describe the land so purchased, each tract or lot separately stated, the total amount of the tax, with penalty, interest and costs, and the year or years of delinquency for which said lands or lots were sold, separately stated, and the aggregate of all such taxes, penalty, interest and costs, and the sum bid on each tract. 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.***"

While it is the duty of the county collector to collect all taxes, penalty, interest and costs, under a first sale of lands for delinquent taxes, by selling all the lands to which the tax lien attaches, if necessary, yet, under the provisions of Section 11128 supra, he has the duty of selling no more than is necessary to discharge the tax lien. However, under the proviso embodied in such section, a sale of all the land in foreclosure of the lien for a sum in excess of the amount due thereunder would not of itself invalidate the sale because such proviso construes the duty of the collector to be merely, "directory in character."

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CONCLUSION

THEREFORE, it is our opinion that when lands are sold, at such first sale, by a collector in foreclosure of a delinquent tax lien on real estate, for a sum in excess of the amount due under such lien, he shall pay such surplus "to the person entitled thereto or if he has doubt, or a dispute arises as to the proper person the same to be paid into the county treasury, to be held for the use and benefit of the person entitled thereto."

Respectfully submitted,

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S. V. MEDLING
Assistant Attorney General

APPROVED:

Roy McKittrick
Attorney General