

TAXATION  
and  
REVENUE:

1. Certificate holder failing to exercise his rights, under such certificate, within four years from the date of its issuance, loses all his rights thereunder, and the taxes, from which sale was made, must be eliminated from the tax indebtedness against the land.
2. Collector cannot change description of land which has been assessed and equalized for taxation.

OPINION NO. 81

July 6, 1942

Mr. Geo. H. Seifert  
County Collector  
Poplar Bluff, Missouri

Dear Mr. Seifert:



This department desires to acknowledge your request for an opinion relating to the Jones-Munger law, which is as follows:

"Would like to get some more information on the Jones-Munger Law. Where a tract of land sold for taxes in the year of 1937, the party got a Certificate and it only brought a part of the taxes and waited over 4 years and never taken a deed how much taxes should I collect, go back and pick up all of the taxes except what was paid or just commence collecting when the Certificate was made?"

"There is a few parties here have Certificates where the land was sold in 1937 only pay about 1/4 of the taxes, would like to know as soon as possible.

"One party told me that that certificate paid all them back taxes, and I told him that it was all due for he did not ask to get a deed in the 4 years time.

"And another thing that I would like to know can a Collector change the description on the books where he knows it is not correct or is that the Assessors place?"

The state has a lien for delinquent taxes on real estate and the Jones-Munger Law is a procedural act for the enforcement of such lien.

When the lien is foreclosed for particular years, under such procedure, the right of the state is foreclosed for those years. There is an exception, and that is in case

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of defect in procedure which is fatal in effecting conveyance of the interest of the state or foreclosure of such interest.

The Supreme Court, in regard to this question, in the case of State v. Baumann, 160 S.W.2d, 697, 699 said:

"\* \* \*Strictly speaking, the only taxes 'foreclosed' by the sale are the taxes for which the sale is made, but in a broader sense the liens of all taxes which are inferior to that of the taxes for which the sale is made are also foreclosed or destroyed by the sale."

The duty of the certificate holder, with respect to the payments of prior and subsequent taxes, is discussed by the Court in the above case at l.c. 700, in the following language:

"\* \* \*The new section provides that upon the third successive sale there is no period of redemption and the purchaser is entitled to a deed upon the payment of subsequent taxes only. Sections 11149 and 11152, which were applicable to all sales, whether on the first, second or third offering, at the time the sales were made in the instant cases, and are still applicable to sales on the first and second offering, were left unchanged by the 1939 revision. The 1939 revision made several changes in the original act, one important change being the provision in Section 11130 that upon the third successive sale no redemption period should be allowed. Also by Section 11131 it was provided, for the first time, that the county or city can protect itself by bidding in the property, on the third sale. Taking all the changes together, we think the legislature understood and intended in original act that the purchaser should pay prior taxes upon any tax sale, and by the 1939 revision intended to change the law only as to the sale on the third offering.  
\* \* \*"

Section 11137 R.S.Mo., 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."

Therefore, the certificate holder, his heirs and assigns lose their rights obtained under the certificate unless they conform to the provisions of the above statute.

#### C O N C L U S I O N

It is therefore, the opinion of this department that after foreclosure under the Jones-Munger Law, by the issuance of a certificate of sale by the collector and after forfeiture of right thereunder by the owner, his heirs and assigns, under the provision of Section 11137 *supra*, such collector must eliminate from the tax indebtedness against the land, taxes for the years for which the sale was made.

#### II.

Assessment of land for taxes must be made by statutory officers and is a quasi judicial act.

State ex rel vs. Dungan, 265 Mo., 353;  
Boonville National Bank vs. Schlotzhauer,  
317 Mo., 1298; 298 S.W., 732; Jefferson  
City Bridge and Transit Company vs. Blaser,  
318 Mo., 373; 300 S.W., 778; State vs.  
F. W. Woolworth, 159 S. W. 2, 1. c. 299.

The duty of a collector, in event of insufficient or invalid description, with reference to a sale of real estate for delinquent taxes is defined by the Court in the case of State vs. Childress, 134 S.W. 2d. 136, 139 in the following manner:

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"\* \* \*The Jones-Munger act, Sec. 9958a, Laws 1933, p.441, provides that 'whenever the county collector shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever, invalid, he shall not convey such lands: but the purchase money and the interest thereon shall be refunded out of the county treasury to the purchaser, \* \* \*.' (Italics ours). And Sec. 9958c, Laws 1933, p. 441, provides that 'if any conveyance for taxes shall prove to be invalid and ineffectual to convey title because the description is insufficient, or for any other cause than the first two enumerated (not applicable here) in the preceding section (9958b) the lien which the state has on such lands shall be transferred to and vested in the grantee, his heirs and assigns, who shall be entitled to a lien on such land for the amount of taxes, interest and penalty, legally due thereon at the time of such sale, with interest, together with the amount of all subsequent taxes paid, with interest, and such lands shall be bound for the payment thereof." (Italics ours)

Therefore it is the opinion of this department that a collector may not change the description of lands assessed and equalized for taxation.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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(Acting) Attorney General