

TAXATION, DELINQUENT- Refunds for taxes derived from erroneous sales of delinquent lands should be paid out of the County Treasury.

July 29, 1943



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

Dear Sir:

This is in reply to yours of recent date wherein you make the following statement and request:

"Section 11155 reads in part as follows:

'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, his representatives or assigns, on the order of the county court.'

"Section 11156 provides that in certain instances, a tax sale made by the county collector shall be invalid, and then the statute provides:

'And for the first two enumerated causes, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the county court.'

"Our attention has recently been called to two or three cases in Buchanan County where tax sales apparently are void for the first of the two reasons specified in Section 11156, and the purchaser at the tax sale has requested that his money be refunded under Section 11156.

"As we all know, the proceeds of a tax sale are distributed in the same proportions and to the same political subdivisions as the taxes themselves would have been distributed, if paid. In our case, the money received from the purchaser at the tax sale would be distributed among the state of Missouri, the general revenue and the special road and bridge revenue of Buchanan County, the interest funds and the sinking funds of three separate Buchanan County bond issues, and the country school district.

"If the county court should decide that a refund should be made in this case, the question arises as to which of the various funds named above should furnish the money with which to make the refund. Perhaps each of the funds referred to should be charged with its proportionate part of the refund; but there is one difficulty in applying that plan, which is, that the state's part of the revenue never gets into the treasurer's hands so as to enable him to charge any part of such a refund against the state revenue.

"We shall appreciate it if you will, at your convenience, give us your opinion as to the proper procedure to follow under each of the sections referred to above in making refunds to those who have purchased lands at delinquent tax sales."

From the sections which you have quoted it appears that the lawmakers have intended that these refunds be paid out of the county treasury. While it may seem inequitable to charge the county treasury with these items, yet we find no provision in the Constitution which would prevent the General Assembly from making such a provision.

Under Section 1 of Article IV of the Constitution the legislative power is vested in the General Assembly. It is only limited by the provisions of the State and Federal Constitution.

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The foregoing statutes make no provision for charging these refunds to the accounts which received the benefits of them. Section 11215 makes provision for refunds of taxes collected on illegal levies, but this section does not apply to refunds under the sections which you have quoted in your request.

The payment of such refunds would come within class 5 of The Budget Law as amended laws, 1941, page 650 - 651 which is as follows:

"The county court shall next set aside a fund for the contingent and emergency expense of the county, the court may transfer any surplus funds from classes 1, 2, 3, 4 to class 5 to be used as contingent and emergency expense. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

CONCLUSION

From the foregoing, it is the opinion of this department that refunds of taxes and interest derived from the erroneous sale of delinquent lands for taxes should be paid out of the county treasury from funds in class five (5) which is for contingent and emergency expenses.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

TWB:PD