TAXATION: Surplus from tax sale should be paid to person entitled thereto. In case of redemption, interest should be charged on the purchase price, costs and subsequent taxes paid by purchaser.

November 30, 1944

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FILE 28

Mr. Roth H. Faubion
Prosecuting Attorney
Barton County
Lamar, Missouri

Dear Sir:

We have your letter of recent date which reads as follows:

"The Treasurer and ex-officio Collector of Barton County, a County under (Township Organization), has in the past deposited the overplus from a delinquent Tax sale in an account in the Treasurer's office, known as the 'Overplus of Tax Sales'. This money is held for the use of either the original owner after a deed had been issued at the expiration of the two year redemption period for return to the purchaser if the property was redeemed during the two years redemption period.

"Is the above the correct procedure? And if so, when the property is redeemed should he charge interest on the full amount bid, that is, the overplus from the tax sale and the total cost, or should we only charge the individual in redeeming, interest on taxes and costs, and return to him from the Treasurer's office the amount of overplus without interest. It seems that Section 11145 Mo. Statutes Annotated, is vague on the subject as to whether the redeeming owner must pay interest on the full sum of the purchase money, as it states, or whether the interest if payable only on the original amount of taxes, costs of sale, etc."

We think your questions are answered by the statutes. Section 11132, R. S. Missouri 1939, reads 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 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. * * * * * * "

The foregoing statute specifically requires the surplus, remaining after payment of the taxes and costs, to be paid to the person entitled thereto. Such person would be the owner of the property. Said statute further provides that in case of a doubt as to the proper person to receive the surplus, the amount shall then be paid into the county treasury until that question is settled.

This office has ruled that the surplus from a tax sale should be paid to the persons entitled thereto. Copies of these two opinions are enclosed herewith.

Section 11145, R. S. Missouri 1939, settles the question as to what the person redeeming the property must pay. Said section reads in part 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. * * * * * "

The amount thus required to be paid is "the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest, * * " and if the purchaser has paid subsequent taxes they shall also be repaid to him.

In cases which have been handled as you have indicated in your county it might appear unfair to charge the redeemer interest on the surplus of the purchase price since he has not had the benefit of that surplus. However, the purchaser has been out the use of his entire purchase regardless of the fact that it was not paid over to the person entitled to receive it. Therefore, in order to comply with the law we think that interest would have to be paid to the purchaser on the entire purchase price and on the costs and on subsequent taxes, if any.

CONCLUSION

It is, therefore, the opinion of this office that the surplus from tax sales should be paid to the person entitled thereto, and in cases where there is a question as to who such person is, in which event such surplus should be deposited in the county treasury to be held until the question is settled as to who is the person entitled thereto.

It is further the opinion of this office that the person redeeming property from a tax sale is required to tender the total amount of the purchase price and costs and subsequent taxes paid, if any, together with interest on said amounts.

Respectfully submitted

APPROVED:

HARRY H. KAY
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(Acting) Attorney General

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