TAXATION AND REVENUE: An interest received by purchaser of certificate of purchase in first and second tax sale, and rights of purchaser of certificate of purchase at third tax sale. Section 11126, R. S. 1939, conflicts in part with Sec. 13, Art. X, Const. 1945, but is saved until July 1, 1946, by Sec. 2, Sch. 1945.

October 18, 1945

FILED
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10/31

Honorable C. E. Ernst
Prosecuting Attorney
Gentry County
Albany, Missouri

Dear Mr. Ernst:

Receipt of your request for an opinion under the date, October 11, 1945, is hereby acknowledged, which reads as follows:

> "Section 13 of Article 10 of the Constitution of 1945 is as follows:
>
> "'Tax Sales--Limitations--Contents of notices.--No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of all owners appearing on the land tax book, and all other information required by law.'
>
> "Our County Treasurer is advertising first-second and third sales of real estate for delinquent taxes under the existing law, Section 2 Sch., 2, The Constitution of 1945, Page 140, Report Number 5 provides as follows:
>
> "'Effect on Existing Laws.--All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946.'

"And I am wondering whether or not any valid and subsisting right would accrue to the purchaser of any real estate offered on first or second sale of such real estate. It occurs to me that the purchaser at the third sale would have title but I am wondering about the situation on first and second sales."

Section 11130, R. S. Mo. 1939, provides that:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell same to the highest bidder, and there shall be no period of redemption from such sales. No certificate of purchase shall issue as to such sales but the purchaser at such sales shall be entitled to the immediate issuance and delivery of a collector's deed. If any lands or lots are not sold at such third offering, then the Collector, in his discretion, need not again advertise or offer such lands or lots for sale oftener than once every five years after the third offering of such lands or lots, and such offering shall toll the operation of any applicable statute of limitations. A purchaser at any sale subsequent to the third offering of any land or lots shall be entitled to the immediate issuance and delivery of a collector's deed and there shall be no period of redemption from such sales: Provided, however, before any purchaser at a sale to which this section is applicable shall be entitled to a collector's deed it shall be the duty of the collector to demand, and the purchaser to pay, in addition to his bid, all taxes due and unpaid

> on such lands or lots that became due and payable on such lands or lots subsequent to the date of the taxes included in such advertisement and sale. In the event the real purchaser at any sale to which this section is applicable shall be the owner of the lands or lots purchased, or shall be obligated to pay the taxes for the non-payment of which such lands or lots were sold, then no collector's deed shall issue to such purchaser, or to anyone acting for or on behalf of such purchaser, without payment to the collector of such additional amount as will discharge in full all delinquent taxes, penalty, interest and costs."

In the case of State ex rel. McGhee v. Baumann, 160 S. W. (2d) 697, l. c. 700, it is held that the only time there shall be no period of redemption following the sale of property for tax delinquency, is at the third sale. The case states:

> "In 1939 the General Assembly made certain changes in the Jones-Munger Act by the enactment of Section 11130, Revised Statutes 1939, Mo. St. Ann. Sec. 9953a, pp. 7995-8000. One of the relators argues that this section is a legislative interpretation of the original Act. We do not think so. Section 11130 repeals and re-enacts Section 9953a of the original act. 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 the 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." (Underscoring ours)

Although it is true that no period of redemption is allowed under Section 11130, supra, the courts will, in the event of fraud, set aside the tax deed and offer relief to those in interest.

In the case of Bussen Realty Co. v. Benson, 159 S. W. (2d) 813, l. c. 817, it is said:

> "Some of the sales provided for under the Jones-Munger law do not allow redemption, In the case where the property has been offered for sale for two successive years and no sale made because of no bid equal to the amount of delinquent taxes and charges, then at the next regular tax sale the collector shall sell such property to the highest bidder, '<u>and there shall be no period of redemption from such sales.</u>' Such sales are therefore final. (Sec. 11130.)
>
> "Redemption is provided, we believe, for the purpose of affording simple and quick relief from the harshness of a summary, ex parte procedure. It is not relief afforded because of a wrong perpetrated upon a person. It affords relief from a sale valid in every particular. It is in addition to relief from a wrong. It does not displace the right of relief in equity to right a wrong, to do justice and equity, to relieve from a sale void because of fraud. There is nothing to indicate, nor is there any reason to believe, that the legislature even contemplated that such

> privilege of redemption should oust or limit the right of relief from fraud of any description in the execution of the law which relief has been so long afforded in this State.
>
> "A failure of a property owner to redeem or his failure to pay the taxes which brought about the sale does not forfeit his right to relief in equity. We have previously considered this theory in Voights v. Hart, 285 Mo. 102, 226 S. W. 248, 253. * * * * * * * * *
>
> "Certainly every man should pay his taxes to support his government. If he neglects to do so he should suffer the penalty prescribed by law but only when that penalty is enforced lawfully and free from fraud, actual or constructive. If the failure to pay taxes and the failure to redeem are to bar a property owner from contesting the validity of a sale of his property for taxes, then all such sales become incontestable even for fraud. Such is not the law."

The same is true even after owners of the land did not redeem the property during the two-year period allowed following a sale at the first or second offering. Mahurin et al. v. Tucker, 161 S. W. (2d) 423, 424:

> "* * * Defendant's position is, since plaintiffs failed to show themselves entitled to relief within the provisions of Sec. 11162, R. S. 1939, Mo. R. S. A. Sec. 11162, and failed to redeem the land under Sec. 11145, R. S. 1939, Mo. R.S.A. Sec. 11145, that the Collector's deed, under Sec. 11149, R. S. 1939, Mo. R.S.A. Sec. 11149, vested defendant with the fee simple title and plaintiffs are not entitled to relief.
>
> "* * * The Jones-Munger law contemplates a sale for a consideration sufficient to pay the delinquent taxes, interest, and charges, Secs. 11127, 11129, R. S. 1939,

> Mo. R. S. A. Secs. 11127, 11129, but if no bid sufficient therefor be received at either of the first two successive annual offerings, then at the third successive annual offering a sale to the highest bidder is authorized, Sec. 11130, R. S. 1939, Bussen Realty Co. v. Benson, Banc, 349 Mo.___, 159 S. W. 2d 813, 817 (5), held that a consideration so grossly inadequate as to shock the conscience warranted setting aside a tax sale conducted under the Jones-Munger law. In discussing the statutory authority to sell at the first two offerings for not less than the delinquent taxes, interest, and charges and at the third successive offering to sell at the bid price, the court there said: 'Yet under either provision, if the land is sold for a grossly inadequate consideration, may a court of equity in the face of such provisions interfere to protect the owner as it has in the past? The answer is yes.' The reasoning underlying the quoted remarks, as well as other rulings therein announced, are fully developed in said opinion and need not be repeated here."

Rights of persons of certain status are preserved under Section 11177, R. S. Mo. 1939, which states:

> "Any suit or proceeding against the tax purchaser, his heirs or assigns, for the recovery of lands sold for taxes, or to defeat or avoid a sale or conveyance of lands for taxes (except in cases where the taxes have been paid or the land was not subject to taxation, or has been redeemed as provided by law), shall be commenced within three years from the time of recording the tax deed, and not thereafter: Provided, that where the person claiming to own such land shall be an infant, or a person of unsound mind, then such suit may be brought at any time within two years after the removal of such disability."

Therefore, it may be said that Section 11130, supra, refers only to sales concerned at the third offer, as was held in the case

of State ex rel. McGhee v. Baumann, supra.

With regard to sales at the first and second offering, Section 11145, R. S. Mo. 1939, applies:

> "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."

The purchaser at any sale shall receive a certificate of purchase as provided in Section 11133, R. S. Mo. 1939. Those who receive such certificates of purchase at the first or second sale are held by the courts to have an inchoate title to the property pending the expiration of the redemption period. The case of Gilmore v. Hibbs, 152 S. W. (2d) 26, so holds.

In the case of City of St. Louis v. Koch (Mo. App.), 156 S. W. (2d) 1, l. c. 6, it is held that a certificate of purchase does not of itself pass title and the title remains in the owner during the period of the redemption:

> "* * * Furthermore, our Supreme Court has held, under the statutes involved herein, that such a certificate of purchase at a tax sale does not of itself pass title to the land because title to the land sold for taxes remains in the owner, during the period of redemption. State ex rel. City of St. Louis v. Baumann, Collector of Revenue, Mo. Sup., 153 S. W. 2d 31. See, also, Donohoe v. Veal, 19 Mo. 331, and Kohle v. Hobson, 215 Mo. 213, 114 S. W. 952."

Section 11149, R. S. Mo. 1939, stipulates the period of time in which real estate sold for taxes may be redeemed:

> "If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyor, the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to

> the lien for taxes for which said tract or lot of land was sold. In making such conveyance, when two or more parcels, tracts, or lots of land are sold for the non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall in anywise become the owner of the certificates thereof, all of such parcels shall be included in one deed."

Although by the language of this statute there is a two-year period for redemption, which period is applicable only on first and second sales as hereinbefore pointed out, this period is not an absolute limitation upon the legal owner's right to redeem. In the case of Hobson v. Elmer, 163 S. W. (2d) 1020, l. c. 1023, it is held:

> "We must, however, also take into consideration the language of Section 11149, R.S. Mo. 1939 (Mo. R.S.A. Sec. 11149): 'If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, * * * the collector of the county in which the sale of such lands took place shall execute to the purchaser * * * a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple.'
>
> "There is one manner and, in our opinion, only one manner in which these seemingly conflicting provisions may be harmonized. We construe them to mean that the owner of the lands has an absolute power of redemption which cannot be defeated by the purchaser during and up to the end of the two-year period. Thereafter the purchaser has a right to obtain a collector's deed at any time within the next two years by complying with the various statutory provisions, to-wit: by producing to the collector his certificate of purchase, paying the subsequently accrued taxes and legal fees

> and demanding his deed. If, after the end of the two-year period and before the purchaser has complied with these conditions precedent to obtaining his deed, the owner or transferee applies for a redemption and makes the required payments he thereby destroys the power of the purchaser to obtain a deed." (Underscoring ours)

Following this first period of two years after the tax sale, during which time the holder of the certificate of purchase has an "inchoate" interest in the property, there is an additional two-year period during which such holder is considered to have an "equitable title," as is held in the case of State ex rel. Baumann v. Marburger, 182 S. W. (2d) 163, l. c. 165:

> "Under our Jones-Munger Act, the holder of a certificate of purchase, throughout the two years immediately succeeding the tax sale, is vested with an inchoate or inceptive interest in the land subject to the absolute right of redemption in the record owner in whom the title remains vested. After the two year period of absolute right of redemption, and for a further two year period, the certificate holder has an equitable title in the property with the right to call in the legal title by producing the certificate of purchase, paying certain taxes and fees, and demanding a deed. Bullock v. Peoples Bank of Holcomb, 351 Mo. 587, 173 S. W. 2d 753; Hobson v. Elmer, 349 Mo. 1131, 163 S. W. 2d 1020; State ex rel. City of St. Louis v. Baumann, 348 Mo. 164, 153 S. W. 2d 31. * * * * * *" (Underscoring ours)

From the foregoing discussion we may conclude that a purchaser of a certificate of purchase at a first or second tax sale receives no title to the property involved until the execution of the deed contemplated by the Jones-Munger law; further, that a purchaser of a certificate of purchase at a

third tax sale is entitled to a deed immediately, which vests title in him if no fraud occurred or other irregularity transpired for which a court of law may set such deed aside.

With regard to any conflict arising under Section 13, Article X, Constitution of Missouri, 1945, we quote Section 11126, R. S. Mo. 1939:

> "The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. And it shall only be necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost due thereon, each year separately stated, and the land therein described shall be described in forty-acre tracts or other legal subdivision, and the lots shall be described by number, block, addition, etc.: Provided however, that if a part or parts of any forty-acre tract or other legal subdivision or lot is assessed on the tax books to two or more parties as owners thereof, then, as to such land or lots, such list shall be so prepared and separated. To such list shall be attached and in like manner so printed and published a notice that so much of said lands and lots as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of sale will be sold at public auction at the courthouse door of such county, on the first Monday in November next thereafter, commencing at ten o'clock of said day and continuing from day to day thereafter until all are offered. The county collector shall, on or before the day of sale, insert at the foot of such list on his record a copy of such notice and certify on said record immediately

> following such notice the name of the newspaper of the county in which such notice was printed and published and the dates of insertions of such notice in such newspaper. The expense of such printing shall be paid out of the county treasury and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed one dollar for each description, which cost of printing at the rate paid by the county shall be taxed as part of the costs of the sale of any land or lot contained in such list." (Underscoring ours)

Section 13, Article X, Constitution of Missouri, 1945. as set out in your letter, prescribes other provisions than Section 11126, R. S. Mo. 1939, and so far as it does the present law is in conflict.

Section 2 of the Schedule of 1945 states:

> "All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Therefore, Section 11126, supra, is still in effect and will be until July 1, 1946. Any tax sales advertised, as in Section 11126, will be effective under such advertisement until July 1, 1946.

Conclusion

A purchaser of a certificate of purchase at the first or second sale of property for delinquent taxes gets no title until, after the end of the two-year period of redemption, he receives the tax deed. A purchaser of a certificate of purchase at a third sale of property for delinquent taxes has a right to

demand title immediately with no period of redemption. All tax deeds are subject to being set aside in the event of fraud being involved in the sale.

Section 11126, R. S. Mo. 1939, conflicts in part with Section 13, Article X, Constitution of Missouri, 1945, but is saved until July 1, 1946, by Section 2, Sch. of 1945.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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JMA:EG