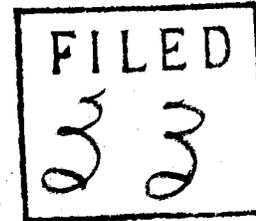


JONES-MUNGER LAW: Costs to be assessed against a purchaser at a tax sale. Purchaser of property upon which homestead rights are established not entitled to possession during period of redemption.

July 1, 1946

Honorable J. R. Gideon
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Dear Sir:

We hereby acknowledge receipt of your request for an opinion, which reads as follows:

"Please give me your official opinion on the following:

"1. Reference Chap. 74, Art. 9, Delinquent and Back Taxes, Revised Statutes of Mo. 1939, information is requested as to the proper costs which should be charged a purchaser at first, second, third and subsequent tax sales. It has been reported to me that these costs vary in different counties, ranging for instance from \$1.75 to \$7.00 for costs at a third sale. This difference is not due to costs of publication as the low cost was in a county that had only 25 tracts advertised while the high cost was in a county that had over 250 tracts advertised. Please inform me what the statutory costs are for first, second, third and subsequent sales and give me section numbers for reference.

"2. Reference as above, Sec. 11135 states that purchaser is entitled to possession one year from date of sale, homesteads excepted. Does this mean that if a homestead is purchased at a tax sale, possession can be taken immediately after the sale, if it is purchased during the redemption period? If not, what is the meaning of the term 'Homesteads excepted' in Sec. 11135?"

In reply to your first question, we would like to point out that there is no arbitrary amount of money which may be designated to cover the costs of every sale of land at a tax sale period. In that regard, it may also be said that the costs will generally vary between any two pieces of property, although each may be up for sale at the first, second, third, or subsequent time. A particular statutory charge may be entered as costs against one piece of property which may not occur as a charge against another.

We shall cite herein the various statutory provisions which are applicable in the assessment of costs as the result of delinquent taxes on property which may be charged to the purchaser of such property at a tax sale. Also included in Chapter 74, Article 9, of the Revised Statutes of Missouri, 1939, are some costs which are levied upon one who redeems property subsequent to a tax sale, and costs levied in connection with legal action brought to enforce tax liens, but these will not be included in this opinion.

Section 11126, R. S. No. 1939, provides:

"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.)

This section was held to be constitutional in the case of State ex rel. Karbe v. Bader, 78 S. W. (2d) 835, 336 Mo. 259.

Section 11129, R. S. No. 1939, provides:

"If at the first offering of sale of any tract of land or lot under the provisions of this law no person shall bid therefor a sum equal to the delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact in his record of sale and the county collector shall note a recital thereof in his record containing the list of delinquent lands and lots, and said tracts of land or lots shall be again offered for sale, at the next sale of delinquent lands and lots as in this law

provided, if such lands or lots be at such time delinquent. If at the second offering for sale no person shall bid therefor a sum equal to the then delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact upon his record of the sale, and the county collector shall enter a recital of such fact in his record book containing the list of delinquent lands and lots."

Under this section, the property may be offered for sale a second time. All of the costs of the first offer are to be included in the costs of the second sale, along with the costs of such sale, so that the costs at the second offering would probably be higher for a given piece of property.

Regarding subsequent offerings of the property, if it has not been purchased at either of the first two sales, Section 11130, R. S. Mo. 1939, provides:

"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."

Each time a particular piece of property is offered for sale some costs will be added, at least in the process of advertising the same.

Section 11133, R. S. No. 1939, provides:

"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. Such certificate of purchase shall also recite the name and address of the owner or reputed owner if known, and if unknown then the party or parties to whom each tract or lot of land was assessed, together with the address of such party, if known, and shall also have incorporated therein the name and address of the purchaser. Such certificate of purchase shall also contain the true date of the sale and the time when the purchaser will be entitled to a deed for said land, if not redeemed as in this law provided, and the rate of interest that such certificate of purchase shall bear, which rate of interest shall not exceed the sum of ten per cent per annum. Such certificate shall be authenticated by the county collector, who shall record the same in a permanent record book in his office before delivery to the purchaser. Such certificate shall be assignable, but no assignment thereof shall be valid unless endorsed on such certificate and acknowledged before some officer authorized to take acknowledgment of deeds and an entry of such assignment entered in the record of said certificate of purchase in the office of the county collector. For each certificate of purchase issued, including the recording of the same, the county collector shall be entitled to receive and retain a fee of fifty cents, to be paid by the purchaser and treated as a part of the cost of the sale, and so noted on the certificate. For noting any assignment of any certificate the county collector shall be entitled to a fee of twenty-five cents, to be paid by the person requesting such recital of assignment, and which shall not be treated as a part of the cost of the sale. No collector shall be authorized to issue a certificate of purchase to any non-resident of the State of Missouri or to enter a recital of any assignment of such certificate upon his record to a

non-resident of the state, until such purchaser or assignee of such purchaser, as the case may be, shall have complied with the provisions of section 11127 pertaining to non-resident purchasers." (Underscoring ours.)

This fifty-cent fee is assessable only at the first and second sales, since in subsequent sales the purchaser is entitled to a collector's deed and not a certificate of purchase, as provided in Section 11130, supra, wherein it is stated, "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." Although the twenty-five cent fee for noting any assignment of any certificate is not to be treated as part of the cost of such sale, it is a proper charge which the county collector may assess for such act.

Section 11139, R. S. No. 1939, provides:

"The clerk of the county court shall attend, either in person or by deputy, as the clerk of the sale of such delinquent land, and shall enter the same on a sufficient record book giving a description of the proper tract or lot, showing how much of each was sold, to whom, and the price, or whether the same remains unsold. For his services as in this section provided he shall receive the sum of twenty-five cents on each tract of land or lot sold, to become part of the costs of sale and paid by the purchaser, which fee shall include entry or recital of redemption on such record." (Underscoring ours.)

This section is applicable to any of the sales.

Section 11150, R. S. No. 1939, provides:

"Such conveyance shall be executed by the county collector, under his hand and seal, witnessed by the county clerk and acknowledged before the county recorder or any

other officer authorized to take acknowledgments and the same shall be recorded in the recorder's office before delivery; a fee for recording shall be paid by the purchaser and shall be included in the costs of sale. Such deed shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of sale, of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, that said land or lot had not been redeemed and that the period therefor had elapsed, and prima facie evidence of a good and valid title in fee simple in the grantee of said deed; and such deed shall be in the following form, as nearly as the nature of the case will admit, namely: * * *"
(Form omitted.) (Underscoring ours.)

The fee included here is the same as recording any other instrument in the recorder's office.

Section 11182, R. S. No. 1939, provides:

"Fees shall be allowed for services rendered under the provisions of this article, as follows: To the collector, except in such cities, two per cent on all sums collected; in such cities, two per cent on all sums collected--such per cent to be taxed as cost and collected from the party redeeming. To the county collector, for recording the list of delinquent land and lots, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

The last sentence of this section may be assessed as costs by the collector of your county.

These are all of the statutory fees that may be assessed as costs of the sale of a piece of property under the Jones-Munger Law, Chapter 74, Article 9, R. S. No. 1939. In the

absence of an itemized statement of costs at the many sales we cannot undertake to determine the reasons why such costs are at variance.

Therefore, as may be readily seen, there is no arbitrary sum as to which we may advise you for the costs to be assessed for any particular piece of property nor for any particular sale, although the sections cited herein are applicable in the determination of such costs.

Your second question involves that part of Section 11135, R. S. No. 1939, which states:

"The purchaser of any tract or lot of land at sale for delinquent taxes, homesteads excepted, shall at any time after one year from the date of sale be entitled to the immediate possession of the premises so purchased during the redemption period provided for in this law, unless sooner redeemed; * * *"

The "redemption period" referred to in this section is provided by Section 11145, R. S. No. 1939, which states:

"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 re-

demption. 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." (Underscoring ours.)

Therefore, at any time before the expiration of the two-year period immediately following the date of the tax sale at which the property was purchased, the owner or occupant of the land has an absolute right to redeem the property. This extinguishes all property rights of the purchaser at the tax sale in that particular parcel.

Under Section 11135, supra, such purchaser has the right to immediate possession of the property so purchased at any time after the expiration of one year from the date of sale, except in the case of a homestead. One who purchases property upon which homestead rights are established is not entitled to immediate possession at the expiration of one year from the date of sale under Section 11135, but instead is to be denied such right of possession. We refer to Section 11149, R. S. No. 1939, which provides:

"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."

There is no such exception in this section. Therefore, the effect of Section 11135 would be to deny the purchaser of property, upon which homestead rights are established, the right to possession for an additional year, or in other words for two years after the date of the tax sale.

CONCLUSION

It is, therefore, the opinion of this department that, under Chapter 74, Article 9, R. S. No. 1939, there is no arbitrary sum which may be assessed as costs for first, second, third and subsequent tax sales. The following sections are applicable in the assessment of costs to one who purchases property at such sale--11126, 11129, 11130, 11133, 11139, 11150, R. S. No. 1939.

It is the further opinion of this department that, under Section 11135, R. S. No. 1939, the purchaser of property at

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a tax sale, upon which homestead rights are established, is not entitled to possession thereto during the period of redemption, or in other words, for a period of two years following the date of the tax sale.

Respectfully submitted,

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APPROVED:

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