

DELINQUENT TAX SALES: In order to get a collector's deed the holder of a collector's tax sales certificate of purchase must obtain from the collector and record such deed within four years of the time of said sale of such realty.

June 22, 1949



Mr. Bryan Tout  
County Audit Supervisor  
Office of the State Auditor  
Capitol Building  
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion upon the following statements of facts:

"A tax sale certificate of purchase representing the delinquent taxes for the years 1933, 1934, 1935, 1936 and 1937 was issued November 10, 1938, under the provisions of Section 11,133 R. S. Mo. 1939.

"A request was made by letter to the County Collector for a deed within the period provided by Section 11,137, R. S. Mo. 1939. Evidently the letter was misplaced, as the deed was not issued. The Collector to whom the letter was directed is now deceased. All taxes accruing since the issuance of the tax certificate, have been paid by the purchaser of the tax certificate.

"The question is, would the present county collector be authorized to issue a collector's deed upon presentation of the tax certificate. If not, is there any other method whereby the holder of the tax certificate could obtain title to the property represented in said certificate."

Article IX, page 255, Mo. R.S.A. Vol. 22, sets forth the law and procedure to be followed in instances where taxes on land become delinquent. This article includes a statement of what lands may be sold for failure of the owner to pay taxes, and the method of sale. Since no issue has been raised, in the case which you present to us, of irregularities in these proceedings, we see no need to discuss them here, but assume that they were regularly complied with.

Section 11132, Mo. R.S.A. 1939, states, in part, that:

"Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the collector, \* \* \* \* \*"

This was done in the instant case.

Section 11133, Mo. R. S. A. 1939, states, in part, that:

"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. \* \* \*"

This also was done.

Section 11136, Mo. R. S. A. 1939, states, in part, that:

"Any purchaser at delinquent tax sale of any tract or lot of land, his heirs or assigns, who takes possession of any tract or lot of land within the redemption period shall be required to pay the taxes subsequently assessed on such tract or lot of land during the period of occupancy and within the redemption period \* \* \* \* \*."

This to was done by the purchaser.

Section 11137, Mo. R. S. A. 1939, states:

"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. \* \* \* \* \*

This the purchaser did not do.

The question, therefore, which is now before us is, what effect did the failure of the purchaser to obtain from the collector, and record, a deed to the land purchased at the collector's sale within four years of the date of said sale?

In the case of Bullock v. Peoples Bank of Holcomb, 173 S. W.(2d) 753, a 1943 case, the court, in discussing the effect of this failure on the part of the purchaser, said: (l.c. 760)

"The tax deed was not recorded within four years from the date of the tax sale, as required by Sec. 11137, but one day too late. That sale was on November 12, 1935. The four years ended on Saturday, November 11, 1939, which was Armistice Day. It and the next day, Sunday, were both public holidays. Sec. 15310. Defendant cites Sec. 655, clause 4, providing that when the last day within which an act shall be done falls on Sunday, it shall be excluded. But the section does not so provide with respect to Armistice Day. The deed should have been recorded on or before that day, and since it was not, defendant's lien or title rights thereunder expired, as Sec. 11137 provides and the plaintiff contends. The fact that a day is made a holiday by statute does not mean business cannot be transacted on that day, except insofar as that statute or some other imposes such restriction. Cartwright v. Liberty Tel. Co., 205 Mo. 126, 131(1), 103 S.W. 982, 983(1), 12 L.R.A., N.S., 1125, 12 Ann Cas. 249; Stewart v. Brown, 112 Mo. 171, 182, 20 S.W. 451, 453(3); State v. Green, 66 Mo. 631, 644 (3); In re Green, 86 Mo. App. 216, 223." (Underscoring ours.)

This decision is sustained in the 1944 case of State ex rel. Baumann, Collector, v. Marburger, 182 S.W.(2d) 163, in which the court stated: (l.c. 165 & 166)

"Under our Jones-Munger Act, the holder of a certificate of purchase, throughout the two years immedi-

ately 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. The record owner continues the owner of the legal title and has the right of redemption which he, or any other persons having an interest in the land, may exercise by application therefor and by making certain required payments at a time within four years immediately succeeding the tax sale and prior to the exercise, after the lapse of the two years immediately succeeding the sale, of the right of the certificate holder to have the legal title transferred to him. Section 9956a, Laws of Missouri 1933, p. 437, Mo. R.S.A. Sec. 11145; Hobson v. Elmer, supra. The legal title does not vest in the holder of the certificate of purchase by virtue of the tax sale until the sale is consummated, that is, until (there being no redemption) the holder shall have exercised his right to have the legal title transferred to him." (Underscoring ours.)

The court has not, subsequent to the above cited case, dealt with this issue, and so we may take this latest pronouncement to be the law in Missouri upon this particular point.

In this connection we would call your further attention to Section 6354, Mo. R.S.A. 1939, which states:

"Unless the holder or owners of certificates of purchase of real estate purchased at any tax sale under this article take out the deed or deeds, as permitted or contemplated by this article, and have such deeds recorded within

two years from and after the time for redemption expires, the said certificates or deeds, and the sales on which they are based, shall, from and after the expiration of such two years, be absolutely null, and shall constitute no basis of title, and shall cease to be a cloud on the title of the real estate to which such certificates refer."

This section applies to the sale of land for delinquent taxes in cities of the first class. While not, therefore, directly applicable to your situation we do believe that it indicates the intention of the Legislature in general in regard to the effect of failure to get and record a deed within the four year period, and that by indirection it thus clarifies the meaning of Section 11137, supra, quoted above.

In view of the above it is the opinion of this department that failure on the part of the purchaser to get and record a deed within four years of purchase at collector's sale divests him of all "lien or title rights" which he acquired by virtue of the collector's certificate of sale, and by his payment of subsequent tax assessments.

In the instant case, however, there is an additional element which we should examine to see what effect, if any, it may have upon the failure of the purchaser to receive and record a title within the four year period as required by Section 11137, supra. This element is stated thus in the letter of inquiry: "A request was made by letter to the county collector for a deed within the period provided by Section 11137, R. S. Mo. 1939." In regard to this evidently either one or the other of two things occurred: the letter mailed to the collector was not received by him; or it was received and was not acted upon. The question here is whether the sending of a letter requesting a deed, within the four year period, relieved the purchaser from compliance with Section 11137, supra. We think not,

In the case of *Hobson v. Elmer*, 163 S.W.(2d) 1020, the court states: (l.c. 1023)

"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.

"The foregoing discussion brings us to the consideration of the second question here involved which is: Did the defendant Elmer perform everything that he was required to perform in order to be clearly entitled to a collector's deed before the alleged redemption was made? Obviously if a certificate holder has actually tendered to the collector his certificates, together with the amounts due thereunder, his right to a deed cannot be defeated simply because the collector has refused or failed to execute and deliver the deed. An attempted redemption at such time would be unavailing." (Underscoring ours.)

It will be observed from the foregoing that if a purchaser actually tenders his certificate of purchase to the collector, within the four year period, the failure or refusal of the collector to give the deed will not permit the original owner, or anyone else, to redeem subsequent to such tender by the purchaser. That, however, is not the same set of facts that we have here. In the instant case no actual tender was made because the collector's certificate of sale was not presented to him and indeed it is not certain that the matter was ever called to his attention in view of the fact that it is not certain that he ever received the letter requesting the deed. Furthermore, if it should be held that the mere writing of a letter be construed to be a tender, it was not done within the four year period. It is therefore the opinion of this department that the writing of the letter aforesaid did not take the instant case out of the explicit provisions laid

down by Section 11137, supra, and that that section applies in full in the instant case. That being so, in view of the language of the above section, and the only extant constructions of it by the Supreme Court of Missouri, it is the conclusion of this department that the purchaser, by reason of his failure to comply with the provisions of Section 11137, supra, no longer possesses any lien or title rights, and that therefore the county collector of the county in which this sale of land was made is not authorized to issue a collector's deed upon presentation to him of the tax certificate by the holder thereof.

Your second question is: "If the present county collector is not authorized to issue collector's deed upon presentation of the tax certificate, is there any other method whereby the holder of the tax certificate could obtain title to the property represented in said certificate?"

This question obviously is one which concerns the course of action which may be pursued by a private individual and has no connection whatever with the discharge of the duties of any state or county officer. In this connection therefore we would call your attention to Section 12899, R. S. Mo. 1939, which states:

"When required, he shall give his opinion, in writing, without fee, to the general assembly, or to either house, and to the governor, secretary of state, auditor, treasurer, superintendent of public schools, warehouse commissioner, superintendent of insurance, the state finance commissioner, and the head of any state department, or any circuit or prosecuting attorney upon any question of law relative to their respective offices or the discharge of their duties."

From the above it must be plain that it is beyond the province of this department to render an official opinion upon the rights or possible course of action of a private individual such as is the purchaser in the instant case. If he wishes to take action in this matter it is incumbent upon him to obtain a private attorney for this purpose. For these reasons therefore this department does not give a legal opinion in answer to your second question. We would, however, unofficially, indicate that there are remedies in equity which we believe to be available to this purchaser to extricate him from the situation in which he is placed.

#### CONCLUSION

It is the conclusion of this department that failure on the part

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of the purchaser to get and record a deed, within four years of the purchase of real estate at the collector's sale, divests him of all lien or title rights which he acquired by virtue of the collector's certificate of sale, and by his payment of subsequent tax assessments, and that, therefore, the county collector of the county in which this sale of land was made is not now authorized to issue a collector's deed upon presentation to him of the tax certificate by the holder thereof.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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