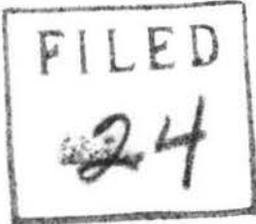


COUNTY COURT?

TAXATION:

PUBLIC IMPROVEMENT:

) Real property held by a trustee under Section 140.260,
) RSMo 1949, is subject to the lien of a special tax
) bill for public improvement provided for in Section
) 88.333; that such special tax bill may not be enforced
) against the county court as a claim against general
) revenue; and that the county court has no authority
) to order such property conveyed to the general contrac-
) tor in satisfaction of the lien of the special tax
) bill, although it may be sold and conveyed subject to
) the lien.



April 17, 1953

Honorable John E. Downs
 Prosecuting Attorney
 Buchanan County
 St. Joseph, Missouri

Dear Mr. Downs:

We render herewith our opinion on the request contained in your letter of March 25, 1953. The request reads as follows:

"Pursuant to Section 140.260, R.S. Mo., 1949, one Pat Carver is the title holder to three lots located within the city of St. Joseph, Missouri. Said city has duly issued special tax bills against the three lots for paving a nearby street.

"It appears that Section 88.333, R.S. Mo., 1949, authorizes the issuance of special tax bills against county or other public property, therefore, the county court would like to know, One: Whether or not the county is liable to the city for the payment of special tax bills for property held by trustees appointed pursuant to Section 140.260. Two: If it is liable, does the county court have the authority to order the trustee to convey the property to the contractor in full satisfaction of its (the contractor's) lien? Three: What happens to the lien the county has and is protecting for all taxing authorities involved if No. Two is answered in the affirmative?"

Honorable John E. Downs

Section 88.333, RSMo 1949, to which you refer is as follows:

"Public improvement -- tax bills against public property (first class cities).-- In all cities of the first class in this state wherein any public improvement is made for which special tax bills are issued against private property for the payment thereof, such tax bills shall also be issued against all county or other public property, church property and all cemeteries, railroad rights of way and property under the control of or owned by public school districts, in the same manner and to the same effect as such tax bills are issued against other private property chargeable for such public improvements; provided, that payment of such tax bills may also be enforced as a prior claim against any general revenue that may have been or shall be received by the authorities managing such property, and suit or other proceedings may be prosecuted therefor the same as any other action at law or in equity."

Section 140.260, RSMo 1949, the other section to which you refer, reads in part as follows:

"Purchase by county or city, when-- procedure.--1. It shall be lawful for the county court of any county, and the comptroller, mayor and president of the board of assessors of the city of St. Louis, to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which section 140.250 is applicable, and to purchase at such sales all lands or lots necessary to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids.

"2. Such person or persons so designated are hereby declared as to such purchases and as title holders pursuant

Honorable John E. Downs

to collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold.

"3. Such person or persons so designated shall not be required to pay the amount bid on any such purchase but the collector's deed issuing on such purchase shall recite the delinquent taxes for which said lands or lots were sold, the amount due each respective taxing authority involved, and that the grantee in such deed or deeds holds title as trustee for the use and benefit of the fund or funds entitled to the payment of the taxes for which said lands or lots were sold.

"4. The costs of all collectors' deeds, the recording of same and the advertisement of such lands or lots, shall be paid out of the county treasury in the respective counties and such fund as may be designated therefor by the authorities of the city of St. Louis.

"5. All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustees upon order of the county court of the respective counties and the comptroller, mayor and president of the board of assessors of the city of St. Louis, and the proceeds of such sales shall be applied, first, to the payment of the costs incurred and advanced, and the balance shall be distributed pro-rata to the funds entitled to receive the taxes on the lands or lots so disposed of."

The first question is: Whether property held by a trustee under Section 140.260 is "county or other public property" within the meaning of Section 88.333. We believe that it is.

Honorable John E. Downs

Probably such property could not be said to be "county * * * property" since the property is not beneficially owned by the county. We conclude, however, that it is "other public property" within the meaning of the statute. It is beneficially owned by the various taxing authorities entitled to the taxes for which the property was sold, including county, school district, road district, state, etc. Property held under like circumstances, where the question involved was whether it was exempt from general taxation under Article X, Section 6, Missouri Constitution of 1945, has been held in effect to be public property and so exempt. *Spitcaufsky v. Hatten*, 353 Mo. 94, 182 S.W. (2d) 86, (Property held in trust for various taxing authorities by Land Trust under Land Tax Collection Act, Section 141.800 et seq., RSMo 1949.)

If this property be not public property, then it is private property and, of course, subject to the lien for special tax bills.

We have not overlooked the possibility of the trustee's being subrogated to the lien for general taxes for which he bought the property, which general taxes would have priority over the special tax bill. However, we are unable to find any support for the subrogation theories in this instance. Certainly a private individual would not have any such right of subrogation; and the municipality, county, state, etc., purchasing at a tax sale stands in no better position than an individual purchaser. 3 *Cooley on Taxation*, Section 1448. Furthermore, it is a general rule that the lien of the general taxes is extinguished by sale absent any statutory provision for subrogation of the purchaser under Section 137.085, RSMo 1949, which provides in part:

"* * * said lien shall continue to be enforced until * * * the land shall be sold * * * as provided by law."

We, therefore, conclude that the property held by the trustee under Section 140.260, RSMo 1949, is subject to the lien of the special tax bill for public improvement provided for in Section 88.333, RSMo 1949.

It is further our opinion, however, that the tax bill may not be enforced against general revenue received by the county court. While Section 88.333 provides that

Honorable John E. Downs

such special tax bill may be enforced as a prior claim against any general revenue received by the "authorities managing such property," we believe that the county court does not "manage" this property. "Manage" is defined in Webster's New International Dictionary, Second Edition, as follows:

"2. To control and direct; * * *
to conduct; guide; administer."

✓ The only "management" contemplated by Section 140.260 is the sale of the property. Subsection 5 provides only that the "lands or lots * * * shall be sold" without specifying who shall attend to the selling; but Subsection 7, relating to compensation of the trustees, provides that such compensation shall not exceed ten per cent of the price for which the lots are "sold by the trustees." It appears that the statute contemplates that the duty and authority to sell is in the trustee, implying negotiation, leading up to a sale, albeit under the supervision of the county court. We believe that the supervisory power, vested in the county court, including the power to order the sale, execution and delivery of deeds, is somewhat akin to the supervisory power of a probate court in ordering and approving the sale of real estate by an executor or administrator, and that it could not be said to be "management" as contemplated by the statute. This view is further supported by practical considerations in that it would be unjust to allow recovery of special tax bills from the county's general revenue when the land or lots is owned by the various taxing authorities and the county beneficially has only a small interest in the property.

A further question is this: Whether the county court may order the land conveyed to the contractor owning the special tax bills in full satisfaction of his claim. We think not. The county court is a court of limited jurisdiction and power, and statutory authority must be found for its every act. While under Section 49.270, RSMo 1949, the county court has rather broad authority in dealing with county property, we take this to mean property to which legal and beneficial title is in the county. Notice that the county has neither under Section 140.260 except as it is one of the several beneficiaries of the trust thereby created. The only way in which the land may be dealt with is that it may be "sold." (Subsection 5.) In its ordinary meaning a "sale" is a conveyance of property in exchange for money paid or to be paid and does not include

Honorable John E. Downs

a conveyance in satisfaction of a lien or debt. In *Williamson v. Berry*, 49 U.S. (8 How.) 495, 544, 12 L. Ed. 1170, the court said:

"'Sale' is a word of precise legal import, both at law and in equity. It means of itself a contract between parties to give and to pass rights of property for money, which the buyer pays or promises to pay to the seller for the thing bought and sold. No departure from the manner in which the sale is directed to be made, either under a judgment at law or a decree in equity, is permitted. So, under a decree authorizing a trustee to sell lands and with the proceeds to pay debts, a conveyance of the land to a creditor in payment of a debt is not a sale and conveys no title."

That this is the meaning intended is further indicated by the provisions for distribution of the proceeds (Sub-section 5) and for payment of the compensation of the trustees "solely" out of the proceeds of the sale. (Sub-section 7.)

We do not mean to say that the property so held by the trustee may not be conveyed simply because it is subject to the lien of the special tax bill, but that any conveyance of the property will be subject to the said lien.

CONCLUSION

It is the opinion of this office that real property held by a trustee under Section 140.260, RSMo 1949, is subject to the lien of a special tax bill for public improvement provided for in Section 88.333; that such special tax bill may not be enforced against the county court as a claim against general revenue; and that the county court has no authority to order such property conveyed to the general contractor in satisfaction of the

Honorable John E. Downs

lien of the special tax bill, although it may be sold and conveyed subject to the lien.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON
Attorney General

WDK/fh