

TAXATION: Proceeds of erroneous sale for delinquent real property taxes to be reimbursed owner from county treasury.



May 1, 1953

Honorable Irvin D. Emerson
Assistant Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department, reading as follows:

"There has been an issue arise between the Collector of Jefferson County and the County Clerk of Jefferson County over who is obligated to pay the 1947 tax back where it has been collected once and also included again in a subsequent tax sale and the real owner wishes to redeem the tax certificate. The facts briefly stated are thus:

"The taxes on a tract of land in Jefferson County, Mo., described in the tax office as 8 acres being part of lots 4 and 5 of Survey 1972 * * * were in arrears for 1947, 1948, 1949, 1950, and 1951 up to the 24th day of December 1951, when the owner through an agent paid the taxes for the year 1947 which payment was not recorded paid on the Collector's books although a paid receipt was issued for such payment. On August 27, 1952, the Collector sold the above described property at a sale for \$65.00 * * * for the taxes due from 1947, 1948, 1949, 1950, and 1951. The owner now wishes to redeem the tax certificate.

"The question is whether Chapter 140

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Section 530 applies to this situation and the year 1947 taxes should be paid out of the County Treasury or whether Chapter 140 Sections 300 and 340 apply and the Collector is liable on her bond to the real owner of the land for 1947 tax being included in the sale of his land for taxes?"

At the outset it becomes pertinent to determine the effect of the purported sale for the taxes for the year 1947 which in fact had been paid by the owner of the real property. That such payment had the effect of invalidating the sale for that year appears from the provisions of Section 140.530, RSMo 1949, which reads as follows:

"140.530. No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and for the first two enumerated causes, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the county court."

(Emphasis ours.)

Apparently no actual "conveyance" of the real property described in the tax certificate of purchase, mentioned in your letter of inquiry, has been made by the collector. This being true, it seems that the provisions of Section 140.540, RSMo 1949, become controlling with respect to the procedure now to be followed. This statute reads as follows:

"140.540. 1. Whenever the county collector shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever, invalid, he shall not convey such lands; but the purchase money and the interest thereon shall be refunded out of the

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county treasury to the purchaser, his
representatives or assigns, on the order
of the county court. * * * "

(Emphasis ours.)

We assume, of course, that the 1947 taxes actually paid by the owner of the real property were duly accounted for by the county collector and transmitted to the county treasury. Should a contrary factual situation exist, then the owner of the real property would be relegated to an action against the collector and the sureties on his official bond for recovery.

CONCLUSION

In the premises, we are of the opinion that the refund of the proceeds arising from the sale of land erroneously included in a sale for delinquent taxes, by reason of such taxes having been paid prior to such sale, should be refunded to the owner of the real property out of the county treasury, under the provisions of Section 140.540, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

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