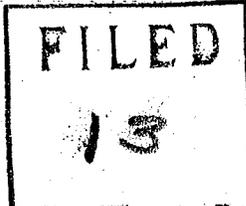


TAXATION and REVENUE:)
DELIQUENT TAXES:)
COUNTY COURTS:) County Court authorized to sell land
purchased by county trustee at delinquent
tax sale for consideration greater than
amount of delinquent taxes.



October 22, 1954

Hon. N. Eimer Butler
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Mr. Butler:

We render herewith our opinion based upon your request of September 28, 1954, which request reads as follows:

"Please furnish me with your opinion concerning Section 140.260 and subsequent sections, Revised Statutes of Missouri, 1949.

"I desire specifically your opinion concerning the sale of land which has been purchased by a trustee by order of the court to protect taxes due and owing.

"Can the court legally sell this land to a person other than the original owner for more than the taxes due and owing? If so, what should be done with the amount received in excess of the taxes due?"

The statute to which you refer, Section 140.260 RSMo 1949, reads as follows:

"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.

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

"6. Upon appointment of any such person or persons to act as trustee as herein designated a certified copy of the order making such appointment shall be delivered to the collector, and if such authority be revoked a certified copy of the revoking order shall also be delivered to the collector.

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"7. Compensation to trustees as herein designated shall be payable solely from proceeds derived from the sale of lands purchased by them as such trustees and shall be fixed by the authorities herein designated, but not in excess of ten per cent of the price for which any such lands and lots are sold by the trustees, provided further, that if at any such sale any person bid a sufficient amount to pay in full all delinquent taxes, penalties, interest and costs, then the trustees herein designated shall be without authority to further bid on any such land or lots."

The first question is whether land purchased by a trustee under the provisions of this section can be sold for more than the taxes due and owing thereon. In our view, it would make no difference whether the sale were made to the original owner or to some other person, there being no period of redemption under Section 140.250, RSMo 1949. In either case, we believe that the court may order the land sold for as much as can be obtained therefor, whether that sum be more or less than the amount of delinquent taxes.

Your next question is what disposition is to be made of the amount received in excess of the delinquent taxes, should there be such an excess. This question is answered by subsection 5 of the above quoted statute as follows:

" * * * * 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."

This may result in the receipt by the funds of an amount greater than the taxes originally owing. However, that does not indicate any legislative intention that some other disposition should be made of the excess. We conclude that the entire proceeds of the sale, whether they be more or less than the amount of the taxes, should be distributed in accordance with the statutory plan.

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CONCLUSION

It is the opinion of this office that:

1) Land purchased by a trustee at a tax sale under the provisions of Section 140.260 RSMo 1949 may be sold for a sum in excess of the amount of delinquent taxes owing thereon; and

2) The entire proceeds of such sale should be applied first to the payment of the costs incurred and advanced, and the balance should be distributed pro rata to the funds entitled to receive the taxes on the lands or lots so disposed of.

The foregoing opinion, which I hereby approve, was written by my Assistant, Don W. Kennedy.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

DWK:A