

TAXATION:

TAX SALE:

COUNTY COLLECTOR:

(1) A publication of notice requisite to the sale of lands for taxes directed merely to the "heirs of" a certain person which notice does not contain the names of the record owners or the names of all persons appearing on the land tax book is insufficient and would render a sale based thereon invalid. (2) When, prior to conveyance, a sale of lands for taxes is discovered to be, for any reason, invalid the purchase money and interest thereon shall be refunded to the purchaser of the county treasury. (3) The costs and expenses incurred in connection with the sale of lands for taxes which sale is later determined to be invalid cannot be charged against the purchase money in the hands of the county.

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December 7, 1955

Honorable Robert E. Wilson
Prosecuting Attorney
Polk County
Bolivar, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion of this department, which request reads:

"An exceedingly complicated problem involving the sale of certain real estate for taxes by the County Collector has arisen in this County upon which I would like to have your opinion. I shall denominate the various parties involved as A, B and C. The facts are as follows:

"A originally owned 80 acres of land which were combined together into a single tract. Thereafter he married B and conveyed 60 acres of this land to B and her bodily heirs. Seven children were then born of the marriage between A and B, and A subsequently died. Administration was duly had on the 20 acres of land which remained in A's name at the time of his death, and B elected to take a child's part. The seven children were placed in various foster homes, some of them were adopted and some were not, and others have legal guardians and others do not. Then B married C and now has five children by him. Meanwhile, the County taxes on the entire 80 acres of land became several years delinquent, and the County Collector several months ago undertook to sell the entire 80 acres for taxes under the Jones-Munger Act. He published notices in the newspaper which described the entire 80 acres as a single tract, and which

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notices were directed merely 'to A's heirs'. The entire 80 acres was sold at the first offering for a cash price of \$1100.00 and a certificate given to the purchaser by the collector. Since the taxes only amounted to around \$200.00 plus the costs, the collector deposited more than \$800.00 in surplus with the County Treasurer. Based on the above facts, I would like to present the following questions for your consideration:

"(1) Is this entire sale invalid because of the failure of the collector to give a proper notice in the publication aforesaid, because of the commingling together of the two tracts, or for any other reason? (2) If the sale is in fact invalid, how can it be undone so as to restore all the parties to status quo, and particularly with regard to the costs of the sale? (3) If the sale is invalid, what disposition should be made of the surplus funds in the hands of the County Treasurer, and also the \$200.00 plus costs retained by the collector to satisfy the taxes? (4) Might a sale based on such a publication be valid as to the 20 acre tract, but invalid as to the 60 acre tract? (5) If the sale, or any part of it, is valid, can the County Treasurer with approval of the County Court pay over any of the proceeds to any of the parties until B's death? (6) Based on your answers to the preceding questions, would it be lawful for the County Treasurer to pay the surplus funds into the Circuit Court of Polk County, Missouri, and file a suit for interpleader of the various interested parties? (7) If the previous sale is invalid, can the collector lawfully re-sell this land for taxes by advertising the two tracts separately, mentioning the name of each heir to the present tract in the separate publications and selling each tract separately, even though the owners of the sixty acre tract cannot be determined until B's death? (8) Would any person be entitled to claim the surplus from the sale of the 60 acre tract in hands of the County treasurer prior to the death of B?"

You state that the 80 acres was described as a single tract and that the notice was directed to "A's heirs." We assume that such was not the manner in which the assessment was carried on the land tax book and we will treat first the matter of notice.

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Section 13 of Article X of the Missouri Constitution provides that no real property shall be sold for taxes without judicial proceedings unless the notice of sale shall contain the names of all record owners thereof or the names of all owners appearing on the land tax book. Said section more fully provides as follows:

"No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of all owners appearing on the land tax book, and all other information required by law."

Section 140.150, as amended to conform to the requirements of the above noted constitutional provisions provides as follows:

"1. All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this chapter on the fourth Monday in August of each year.

"2. No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of all owners appearing on the land tax book and all other information required by law; provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor.

"3. The entry of record by the county collector listing the delinquent lands and lots as provided for in this chapter shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs.

It is to be noted that prior to the 1945 Constitution there was no requirement that the notice of sale of real property for delinquent taxes in a nonjudicial proceeding contain the names of the record owners or the names of the owners appearing on the land tax book. In fact such requirement was specifically negated by

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the following language: RS1939, Sec. 11125.

"It shall not be necessary to include the name of the owner, mortgagee, occupant or any other person, corporation owning or claiming an interest in or to any of said lands or lots in the notice of sale."

Section 140.170, RSMo 1949, provides for the publication of the notice of sale as follows:

"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 fourth Monday in August.

"2. In addition to the names of all record owners or the names of all owners appearing on the land tax book 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.

"3. 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 fourth Monday in August next thereafter, commencing at ten o'clock of said day and continuing from day to day thereafter until all are offered.

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"4. 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."

It is fundamental that in construing a statutory provision relating to the sale of land for delinquent taxes such provision must be strictly construed in favor of the owner of said land. This rule is stated in 61 C.J., Sec. 1519, page 1117, as follows:

"Sales of land for delinquent taxes being in derogation of private rights of property, the power has been said to be strictis-simi juris and statutes authorizing such sales must be strictly construed in favor of the owner of such land, or in so far as they are intended for the benefit, or the protection, of the citizen, and the scope of such statutes is never enlarged beyond their actual terms."

The rule has long been recognized and applied by the appellate courts of this state, i.e. Meriwether vs. Overly, 228 Mo. 218; Schlafly vs. Baumann, 108 S.W.(2d) 363.

The following is contained in Cooley, Taxation 4th Edition, Vol. 3:

Sec. 1409, p. 2791-"A notice of sale, as required by statute is necessary to authorize a tax sale and the absence of the notice renders the sale void. This is one of the most important of all safeguards that have been deemed necessary to protect the interests of persons taxed and nothing can be substituted for it or excuse the failure to give it."

Sec. 1414, p. 2799-"Unusual care is required in obeying the directions of the statute regarding notice, or no one who is entitled to notice can be bound by a sale which has been made without it."

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Turning more specifically to the instant facts we invite your attention to the following found in 51 Am. Jur. Taxation, Sec. 1037, page 907:

"A notice of the sale of land for taxes as the property of the 'heirs of' a deceased owner, is insufficient, in the absence of express statutory authority."

In the case of Holroid vs. Pumphrey, 15 Law Ed. 264, 18 How. 69, decided by the Supreme Court of the United States, the plaintiff brought suit to obtain possession of certain lands held by the defendant. Plaintiff claimed title under a tax sale made in the year 1846. It appeared that there has been a prior tax sale in the year 1844 in which the notice of sale listed the property as property of the "heirs of James Thomas." In regard to the 1844 sale and specifically in regard to the notice of said sale the court said:

"Our opinion is, that the sale in 1844, as the property of the 'heirs of James Thomas,' was inoperative upon the title of the plaintiff. The advertisement did not express the name of the person to whom the lot was assessed on the books of the Corporation at the time of such assessment, as was required by the Act of Congress of the 26th May, 1824, amending the city charter (4 Stats. at L. 75, section 2); nor were the taxes due for that year collected by means of its sale; at most, it was an abortive effort to do so, which failing, left the lien of the Corporation on the lot for the assessed taxes, and its legal remedies to enforce it unimpaired; * * * * *

"The Act of Congress above referred to provides for the case. It declares 'that no sale of real property, for taxes hereafter made, shall be impaired or (made) void by reason of such property not being assessed or advertised in the name or names of the lawful owner or owners thereof, provided the same shall be advertised as above directed.' We have seen that the Corporation was directed to advertise the name of the person to

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whom the lot appeared to be assessed on the books of the Corporation."

Bearing in mind the fact that the provisions of Article X, Section 13 of the Constitution, and Section 140.150, RSMo 1949, relating to the inclusion of the name of the record owners of the names of the owners appearing on the land tax book in the notice of sale and for the benefit of the taxpayer, we are of the opinion that under the foregoing noted decision and cases authorizing a notice of sale directed merely to "A's heirs" is insufficient. It, of course, follows that a failure to comply with this mandatory condition precedent of publishing a valid notice renders the tax sale invalid as to the entire 80 acre tract.

What has heretofore been stated disposes of questions 1, 4 and 5.

Questions 2, 3 and 6, relate to what disposition should be made of the proceeds of the sale and the payment of the costs incurred in such sale.

Your attention is directed to Section 140.540, RSMo 1949, which provides as follows:

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

"2. Such invalid sale shall suspend for the period intervening between the date of the sale and the discovery of its invalidity the running of the statute of limitations.

"3. In such cases the county collector shall make an entry opposite to such tracts or lots in the record of certificates of purchase issued or redemption record that the same was erroneously sold, and the cause of invalidity, and such entry shall be prima facie evidence of fact therein stated. He shall notify the county clerk of such action, whose duty it shall be to make a like entry

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upon his sale record."

This section provides that if the collector shall discover, prior to conveyance, that the sale was for any cause whatsoever invalid, the purchase money and the interest thereon shall, on order of the county court, be refunded out of the county treasury. Said section is here applicable since the sale here considered constituted the first offering and no conveyance has yet been made. In view of the express provision of this section that the purchase money and interest thereon shall be refunded to the purchaser on order of the county court we are of the opinion that an interpleader suit would not be necessary or appropriate.

The costs of printing the tax sale notice is provided for in Section 140.170, as follows:

"5. 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."

Said section provides that said expense shall be paid out of the county treasury and taxed as part of the costs of the sale.

Section 140.220, RSMo 1949, provides that the county clerk shall act as clerk of the sale and specifies a fee as follows:

"1. 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.

"2. For his services as in this section provided, he shall, except in those counties having a population in excess of one hundred thousand, receive the sum of twenty-five cents on each

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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."

Said fee constitutes a cost of the sale and is to be paid by the purchaser.

Section 140.290, RSMo 1949, provides that the collector shall be entitled to a fee of .50¢ for issuing a certificate of sale. Said fee is likewise to be paid by the purchaser.

It is our opinion from the foregoing that the costs of publications would be borne by the county and would not be subject to reimbursement out of the proceeds of the sale since the sale is invalid and the purchase money is required to be refunded to the purchaser. Likewise, we are of the opinion that the fees of the two officers above mentioned could not be charged against the proceeds of the sale since such monies are to be refunded. We know of no other provision which would permit payment of said fees from other sources in the event of an invalid sale.

Lastly, you inquire whether the collector may resell this land for taxes. We know of no provision of law which would prohibit a resale of land for taxes where such lands had been sold at a sale which is later determined to be invalid. We would suggest upon resale that the 20 acre and 60 acre tracts be listed and sold separately since each particular tract is liable only for the taxes which have been assessed against it and cannot be sold for the taxes due on the other lands of the same owner or others, and that the notice of sale relating to each should contain the names of all record owners or the names of all owners appearing on the land tax book.

In view of our previous discussion relating to the validity of the tax sale here involved, we need not at this time undertake a discussion of question number 8.

CONCLUSION

Therefore, in the premises, it is the opinion of this office that:

(1) A publication of notice requisite to the sale of lands for taxes directed merely to the "heirs of" a certain person which notice does not contain the names of the record owners or the names of all

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persons appearing on the land tax book, is insufficient and would render a sale based thereon invalid.

(2) When, prior to conveyance, a sale of lands for taxes is discovered to be, for any reason, invalid, the purchase money and interest thereon shall be refunded to the purchaser out of the county treasury.

(3) The costs and expenses incurred in connection with the sale of lands for taxes, which sale is later determined to be invalid, cannot be charged against the purchase money in the hands of the county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey,

Yours very truly,

John M. Dalton
Attorney General

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