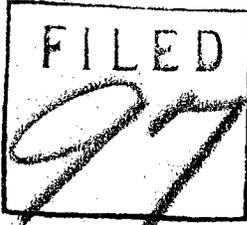


TAXATION:
TAX SALES:
COUNTY COLLECTOR:

A publication of notice requisite to the sale of lands for taxes directed merely to the "heirs of" a certain person is insufficient and would render a sale based thereon invalid even though that was the method by which the owner was actually listed on the land tax book. In the event the proceeds arising as a result of an invalid sale are refunded to the purchaser out of the county general revenue fund the proceeds of a subsequent valid sale should be paid over to general revenue.



June 4, 1956

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

Dear Sir:

At an earlier date you requested an opinion as to the validity of a tax sale where the published notice was directed merely to "A's heirs." Under date of December 5, 1955, this office issued an official opinion holding that a notice of sale of land for delinquent taxes, directed merely to the "heirs of" a certain person, is insufficient and would render a sale based thereon invalid. Due to a lack of information it was assumed for the purpose of that opinion that the phrase "A's heirs" was not the manner in which the assessment was carried on the land tax book. We are now advised that the assessment, or assessments, in question were actually carried on the land tax book in the name of "A's heirs" and you ask a reconsideration of said opinion in light of this fact.

As noted in the previous opinion, Section 13 of Article X of the Constitution of 1945, and Section 140.150, RSMo 1949, provide 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 or the names of all owners appearing on the land tax book. It was further 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 and, in fact, such requirement was negated by the terms of the then existing statute.

In view of the holding of the December 5, 1955, opinion, the question now remains as to whether a notice of sale directed to "A's heirs" is in compliance with the requirement that the notice shall contain, in lieu of the names of all record owners, the names of all owners appearing on the land tax book. What then

Honorable Robert E. Wilson

is the requirement as to names of owners appearing on the land tax book?

Section 137.215, RSMo 1949, provides that the land tax book shall contain the "owner's name, if known, and if not, then the name of the original patentee, grantee, or purchaser from the federal government, the state or county, as the case may be."

Section 137.225, RSMo 1949, provides that the first column of the real estate book "shall contain the name of the owner, or owners, if known; if not, the names of the party who paid the last tax; if no tax has ever been paid then the name of the original patentee, grantee or purchaser from the federal government, the state or county, as the case may be."

Speaking in regard to the above-noted two statutory provisions, the Supreme Court in the case of State vs. Clements, 219 S.W. 900, l.c. 901, said:

"Read and construed together, the three sections seem to mean that land shall be assessed in the name of the owner, if known, if not, in the name of the party who paid the last tax, if no tax has ever been paid, then in the name of the original patentee, etc.; * * * *"

While we do not find any judicial interpretation of the word "name," as used in relation to the land tax book, the Supreme Court had occasion to interpret said word as used in a like manner in relation to the personal assessment book. The court in the case of State vs. Corneli, 149 S.W. 2d. 815, held that the word should be taken in its plain, ordinary and usual sense and that a person's name is the designation ordinarily used and by which he or she is known in the community. More specifically, the court said at l.c. 821:

"* * * * #But what does the word 'name' mean? We think the word 'name' as used in the statutes with reference to the assessment of personal property, should be taken in its plain, ordinary and usual sense. Sec. 655, R.S. 1929, Mo. St. Ann. Sec. 655, p. 4899. A person's name is the designation ordinarily used, and by which he or she is known in the community. Names are used as a method of identification. * * * *"

We perceive of no reason why a like definition should not obtain to said word as used in relation to the land tax book.

Honorable Robert E. Wilson

As was pointed out in the opinion of December 5, 1955, statutory provisions relating to the sale of land for delinquent taxes are to be construed most strictly in favor of the owner of said land and a proper notice of sale 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. This rule takes on added importance when it is borne in mind that prior to 1945, the statutory authority for the sale of land for delinquent taxes in a nonjudicial proceeding specifically stated that the name of the owner need not be included in the notice of sale and that thereafter the framers of the 1945 Constitution saw fit to require the notice of sale to contain the names of all record owners, or the names of all owners appearing on the land tax book.

The term "A's heirs" is not within the definition of the word "name" as above noted. Nor do we find any statutory authority for the entry of a term such as "A's heirs" on the land tax book in lieu of the "name" of the owner, the party who last paid the tax, or the original patentee, grantee, or purchaser from the federal government, state or county, as the case may be.

We understand Section 13 of Article X of the Missouri Constitution and Section 140.150, RSMo 1949, to mean the "names" of all owners appearing on the land tax book which are properly entered therein under direction and authority of law. It is apparent from the foregoing that in the instant case no proper entry has been made in the land tax book and, therefore, such entry as was made cannot, in our opinion, be made the basis of a valid sale in a nonjudicial proceeding.

You further inquire in the event the sale is invalid and the purchase money is refunded to the purchaser from the county general revenue fund and the land is again sold, whether the collector should pay the proceeds of the second sale to the county general revenue fund or distribute the tax proceeds from such second sale to the various school districts, road districts, and other taxing authorities.

Your attention is invited to Section 139.210 RSMo 1949, which provides, in part, as follows:

"1. Every county collector and ex officio county collector, except in the city of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on

Honorable Robert E. Wilson

or before fifteenth day of the month, pay the same, less his commissions, into the county treasuries and to the director of revenue."

Said section provides that on or before the 15th day of each month the county collector shall pay all collections into the county treasury or to the Director of Revenue, as the case may be. In view of the provisions of this section we are of the opinion that the proceeds of a valid second sale should be turned over to the county treasury.

CONCLUSION

Therefore, it is the opinion of this office that a publication of notice requisite to the sale of lands for taxes directed merely to the "heirs of" a certain person is insufficient and would render a sale based thereon invalid even though that was the method by which the owner was actually listed on the land tax book.

We are further of the opinion that in the event the proceeds arising as a result of an invalid sale are refunded to the purchaser out of the county general revenue fund the proceeds of a subsequent valid sale should be paid over to the county treasury.

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

Yours very truly,

John M. Dalton
Attorney General

DDG:mw