

TAXATION: When a collector issues a deed on the third sale of  
TAX SALES: property for delinquent taxes to a purchaser who  
COLLECTORS: has purchased more than one tract, all of the tracts  
COLLECTOR'S DEEDS: purchased by one individual must be included in one  
deed. Person going in boat and fishing over land flooded  
by river not liable to prosecution for trespassing.

July 9, 1959



Honorable Morran D. Harris  
Prosecuting Attorney  
St. Clair County  
Osceola, Missouri

Dear Mr. Harris:

You have recently requested an opinion from this office concerning collector's deeds on tax sales, which request reads:

"In 1958 the County Collector of St. Clair County, advertised for sale and sold some 900 tracts or descriptions of land in the subdivision of Monegaw Springs in St. Clair County, Missouri. All of the tracts, about which we are here concerned, amounting to about 900, were purchased, on third sale, by Edwin W. Mills, trustee for and on behalf of St. Clair County, Missouri, and the County Collector prepared and delivered to the said trustee, a separate deed for each and every tract purchased, and billed the same to the county at the rate of \$1.50 each, for which he was paid more than \$1300.00. The County Court and the Auditor's office are of the opinion that all of said tracts should have been included in one deed, since they were all sold to one purchaser and that the County Collector should have been paid for only one deed under the provisions of Sec. 140.420(2), R.S., Missouri 1949. We would like an official opinion on this matter from your office."

Section 140.420, RSMo 1949, provides for the issuance of a collector's deed to the holder of a certificate of purchase. Paragraph 2 of this section specifically provides that the collector's deed shall include all parcels of land which are sold to the same

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purchaser. Prior to 1939, this section applied to all tax sales since in all tax sales the purchaser at the sale received a certificate of purchase and the owner had a specified period within which to redeem his land from the tax sale.

In 1939 the Jones-Munger Act was amended. These provisions are now found in Section 140.250, RSMo 1949. This section provides that there shall be no period of redemption from the third sale for taxes and that the purchaser at such third sale shall be entitled to the immediate issuance and delivery of the collector's deed. This history and the effect of this amendment is pointed out in *Journey vs. Miller* (en banc) 363 Mo. 163, 250 S.W.2d 164.

Thus, as is pointed out in the *Journey* case, the provisions of Section 140.240, RSMo 1949, as to the issuance of a collector's deed to the holder of a certificate of purchase, cannot apply to a purchaser at a third sale because no such certificate of purchase is issued at a third sale, but such purchaser is entitled immediately to a collector's deed. This change in the law materially changed the rights of a purchaser at a third sale to a collector's deed. However, there was no necessity for a change in the provisions as to what such deed should contain and it is not believed that the Legislature did, in fact, make any such change.

It is, therefore, our conclusion that the provisions of paragraph 2 of Section 140.420, RSMo 1949, requiring the collector to include in one deed all parcels of land purchased by one individual, apply to a purchaser at a third sale who is entitled to an immediate deed, as well as to a purchaser at the first or second sale who, at the appropriate time, and in the absence of redemption, presents his certificate of purchase and is entitled to a collector's deed.

As to the second question in your opinion request, concerning the obligations of the county and the special road district to repair a bridge within the road district, we enclosed herewith three former opinions of this office which we believe will answer your question. These opinions are, one dated September 13, 1952, to the Honorable Morran D. Harris, prosecuting attorney of St. Clair County; another dated January 24, 1945, to Honorable Forrest Smith, State Auditor, and the third dated January 27, 1948, to the Honorable Frank Adams, prosecuting attorney of Polk County.

As to your third question concerning the possibility of criminal prosecution for trespassing of one who operates his boat upon flood waters over private property, we have searched the statutes in light of the facts given by you and find no statute which would authorize such prosecution.

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CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that the collector is required by paragraph 2 of Section 140.420, RSMo 1949, to include all tracts sold at third tax sales to the trustee for the county in one deed, and that such collector is entitled to the fees for making only one deed.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton  
Attorney General

Enc. (3)  
F. L. Howard