

TAX SALES
REDEMPTION:

Since the county collector has no duty or authority to collect delinquent city taxes in a city of the third class, he is under no obligation or statutory duty to check to see whether city taxes accruing subsequent to the sale of realty by the county collector for delinquent county and state taxes have been paid by the certificate holder before permitting the owner to redeem the property

May 22, 1961



Honorable Roderic R. Ashby
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Mr. Ashby:

Your request addressed to the Honorable John M. Dalton for an official opinion reads as follows:

"I seek an official opinion as to the following question: Whether it is the duty of the County Collector to check and see whether city taxes which have accrued subsequent to the tax sale have been paid by the certificate holder before permitting the owner to redeem the property?"

In your letter of February 16, 1961, you stated that the request for an opinion was made after you were contacted by the city clerk when the owner of property located in the City of Charleston, a city of the third class, attempted to redeem property sold for delinquent state and county taxes.

The manner of redemption of realty sold for taxes, and the duty of the county collector in regard to redemption, is set forth in Section 140.340, RSMo 1959, which reads:

"1. The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner; By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the cost of the sale together with interest at the rate specified in such certificate, not to exceed ten per cent annually, with all subsequent taxes which have been paid thereon by the

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purchaser, his heirs or assigns, with interest at the rate of eight per cent per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption.

"2. Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his heirs or assigns, at the last post office address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption.

"3. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns of any further interest or penalty.

"4. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time."
(Emphasis ours)

From the above section it is clear that it is the duty of the County Collector, in a situation which comes within the compass of Section 140.340, supra, to mail to the purchaser of land sold for taxes, notice of the deposit for redemption set forth in numbered paragraph 1 of the above section. With reference to the amount required to be paid for redemption, numbered paragraph 1 states that there shall be included in the amount deposited "all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of 8% per annum."

It is clear that to resolve this issue we must determine the meaning, that is the inclusiveness, of the term "all subsequent taxes", as it is used in paragraph 1 of Section 140.340, supra. This section is a part of the comprehensive Jones-Munger Act of 1933.

Section 140.440, RSMo 1959, relates to the taxes that a certificate holder must pay before he is entitled to apply for a deed and reads in part as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein

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pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which such holder makes demand for deed, * * * (Emphasis ours)

The underlined portion of the above quoted statute clearly spells out that before the petitioner is entitled to a deed he must pay "all" taxes that have accrued since the certificate was issued and all prior taxes the lien for which was not foreclosed by the sale.

Section 140.440, RSMo 1959, must be read in conjunction with Section 140.420, RSMo 1959, which provides that the collector's deed "shall vest in the grantee an absolute estate in fee simple, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold." Inasmuch as the purchaser is not entitled to a deed absent payment of "all" unpaid taxes, it is obvious that the word "all" can mean only such taxes (including those assessed subsequent to the taxes for which the sale was made) as the collector is authorized to accept, else the foregoing provision of Section 140.420 would be meaningless. Such was the effect of the decision of the Supreme Court in State v. Baumann, 160 S.W. 2d 697. In that case the court held as follows:

"Section 11109, Revised Statutes 1939, Mo. St. Ann §§ 9937, p. 7982, declares a lien on real estate in favor of the State for general taxes. Section 11206 declares a lien in favor of the State for city, town and school taxes, 'the same as for state and county taxes'. By Section 11207 the lien of the State for city taxes was assigned to the cities. See history of these and other statutes in State ex. rel. v. Nolte, 345 Mo. 1103, 138 S.W. 2d 1016. The wording of these sections indicates that the lien for general city, town and school taxes is on an equality with the lien for general state and county taxes and that is the general rule. 26 R.C. L. page 404, sec 361. But under existing Missouri statutes we do not believe we are authorized to hold that the lien for general taxes takes precedence in the reverse order of accrual.

Outside the city of St. Louis, under the Jones-Munger Act, sales for state and county taxes are made by the county collector and sales for city taxes are made by the city collector under a different advertisement. One purpose of Sections 11149 and 11152 evidently

is to prevent a sale by the county collector from destroying the lien for city taxes and to prevent a sale by the city collector from destroying the lien for state and county taxes, both liens being on an equality. Section 11152 requires the purchaser, before receiving a deed, to pay prior unpaid taxes, but, as the county collector is not authorized to receive city taxes and the city collector is not authorized to receive state and county taxes, Section 11149 makes the deed subject to such unpaid prior taxes as the collector is not authorized to collect. That is, the deed of the county collector is subject to prior unpaid city taxes and the deed of the city collector is subject to prior unpaid state and county taxes. The city of St. Louis, being both a city and a county, the same officer would there collect all the prior general taxes, state, county and city, before delivering the deed. (Emphasis ours)

Section 11152 referred to in the Baumann case, supra, is present Section 140.440 and Section 11149 is present section 140.420 RSMo 1959. The Baumann case makes it clear that sales for city taxes are made by the city collector in a proceeding wholly unrelated to any sale by the county collector. And the case of Gilmore v. Hibbs, 152 S.W. 2d 26, expressly held that a city of the third class may proceed under the Jones-Munger Law to sell real estate for the collection of delinquent city taxes, said sale being conducted by the city collector.

In Cabiness v. Bayne, 257 S. W. 2d 626, 631, the Supreme Court of Missouri in referring to the opinion in the case of State ex rel McGhee v. Baumann, 160 S. W. 2d 697 stated:

"It also noted that S. c. 11109, R. S. 1939, Sec. 140.020, RSMo 1949, V. A. M. S., declares a lien on real estate in favor of the State for delinquent general taxes, and that Sec. 11206, R. S. 1939, Sec 140.690 RSMo 1949, V. A. M. S., declares a lien on real estate in favor of the State for city, town and school taxes 'the same as for state and county taxes'. Also, by Sec. 11207, R. S. 1939, Sec 140.700 RSMo 1949, V.A. M. S., the lien of the State under Sec. 11206, supra, was assigned to the cities, thus indicating the lien for general city, town and school taxes was put on an equality with the lien for general state and county taxes, which the decision said was the general rule. * * *"

It is also to be noted that Section 140.440, RSMo contains a further provision to the effect that a purchaser that shall suffer "a" subsequent tax to become delinquent and "a" subsequent certificate

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of purchase to issue on the same property forfeits his right to priority to the subsequent purchaser. The clear implication of this statute is that the subsequent tax therein referred to is a tax of the same kind as that for which the property was sold to the first purchaser.

Another statutory provision relating to subsequent taxes is Section 140.320, RSMo 1959, which provides that if a purchaser takes possession of the land within the redemption period he must pay "the" taxes subsequently assessed during the period of occupancy and within the redemption period, and that upon failure to do so shall forfeit all rights as to such land acquired by his certificate of purchase. Here, too, the clear implication is that the reference to "the" taxes subsequently assessed means those taxes of the same kind as those for which the property was sold to the holder of the certificate of purchase.

It is true that none of the cases cited hereinabove define the phrase "all subsequent taxes". However, these cases do clearly hold that the sale of real estate for delinquent state and county taxes and for delinquent city taxes are two separate and distinct transactions, neither one of which forecloses action on the other. A study of these cases in the light of the above cited statutes leads to the conclusion that the county collector has nothing to do with delinquent city taxes in a city of the third class, and that the term "all subsequent taxes" as used in Section 140.340 has reference only to those taxes which the collector is authorized to collect. In the light of the Jones Munger Law, read as a whole, the term "subsequent" taxes can mean only such taxes as those which would permit the particular collector to sell the property as delinquent.

CONCLUSION

Therefore, it would appear that since the county collector has no duty or authority to collect delinquent city taxes in a city of the third class, he is under no obligation or statutory duty to check to see whether city taxes accruing subsequent to the sale of realty by the county collector for delinquent county and state taxes have been paid by the certificate holder before permitting the owner to redeem the property.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General