

ESCHEAT:  
REAL PROPERTY:

The County Collector may not sell for delinquent taxes land which has escheated to the State in accordance with Section 470.010 RSMo 1959. Title to such property vests in the State immediately upon the death of the former owner and Section 470.060 et seq. merely outlines the formal procedure necessary to secure a judicial determination that the title has in fact vested.

Opinion No. 313 (Denman)

January 30, 1963

# 26 (1963)

Honorable Harold L. Henry  
Prosecuting Attorney  
Howell County  
West Plains, Missouri



Dear Mr. Henry:

This letter is in response to your letter of August 18, 1962, requesting an opinion of this office upon the following matter:

"A matter has come up down here in this County concerning some delinquent tax land that has escheated to the State of Missouri. This real property was owned by a party who died on January 11, 1959, leaving no heirs and it escheated to the State of Missouri under order of the Probate Court. On January 1, 1960, the taxes on the property for the year of 1959 became delinquent, and there has been a delinquency for each year thereafter. The County Collector has, therefore, in view of the three year delinquency of the payment of these taxes advertised this land for sale under the regular delinquent tax sales statutes. In view of the provisions of Chapter 470 R.S. Mo., 1959, and especially in Sections 470.040 and 470.170 thereof, I question whether or not the purchaser at such a sale could obtain title thereto. The specific question, as I see it, is whether or not lands that have escheated to the State of Missouri and on which the taxes

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become delinquent, can be sold by the County Collector at a delinquent tax sale.

"This sale has been advertised for August 27, 1962, and I would appreciate a memorandum or an opinion from your office on this question."

Section 470.010, RSMo 1959, provides in part as follows:

"If any person die intestate, seized of any real or personal property, leaving no heirs or representatives capable of inheriting the same; \* \* \* such real and personal estate shall escheat and vest in the state, subject to and in accordance with the provisions of sections 470.010 to 470.260."

Section 470.060, et seq., proscribes the procedure by which the prosecuting attorney of the county in which the real estate is situate shall secure a judicial determination of title to such property.

All real and personal property belonging to the State is exempted from taxation by general law. Article X, Section 6, Constitution of Missouri, 1945; Section 137.100, RSMo 1959. Taxes levied and assessed against a tract of land while under private ownership cannot be collected after such land has been acquired by a governmental agency. State vs. Bauman, 1941, Mo., 153 SW2d 31. Your question turns upon when the land vests in the State. If it escheats and vests in the State immediately upon the death of the former owner, it may not be sold for taxes accruing either prior or subsequent to his death. However, if the land does not vest in the State until there has been a judicial determination thereof, it may be sold for delinquent taxes prior to the filing of information to secure such a determination.

In an opinion of this office issued on August 11, 1942, to the Honorable F. M. Brady, Prosecuting Attorney of Benton County, Missouri, this office concluded that under Section 470.010, real property formerly owned by a decedent who leaves

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no heirs capable of inheriting vests in the State immediately. The procedure to secure title thereto merely outlines the means of securing a judicial determination that the title has in fact vested. This opinion was modified by an opinion of this office issued on July 12, 1943, to the Honorable Forrest Smith of the Board of Fund Commissioners. However, the conclusion reached in the earlier opinion pertinent to your question was not changed or modified. A copy of both of these opinions is enclosed herein.

We can find no Missouri cases that have as yet passed directly on this point. In *State vs. Buchanan*, 1948, Mo., 210 SW2d 359, the Court held that where the State was not a party to the proceedings, the probate court had no jurisdiction to determine title to certain land in dispute between the State and alleged heirs of the deceased former owner. The Court intimated that escheat land vested immediately, saying (l. c. 362):

"Upon the death of the deceased, the legal title to the real estate descended to and vested in the heirs at law of the deceased, 'subject to the payment of his debts, etc.' \* \* \* If there were no heirs or representatives capable of inheriting the described real estate, it escheated and title vested in the state, subject to and in accordance with the provisions of Art. 1 of Chap. 3, Sec. 620, et seq., R.S. 1939, Mo.R.S.A. \* \* \*"

Courts in other jurisdictions have differed as to the necessity for a judicial proceeding to establish an escheat and vest the land in the State. 30 C.J.S., Escheat, Section 19b(2), page 1184. However, recent decisions hold that on the death of a citizen intestate and without heirs, the title to his property vests in the State immediately upon his death. 23 A.L.R. 1237. In the annotated case, *Re Melrose Ave.*, 234 N.Y. 48, 136 N.E. 235, 23 A.L.R. 1233, and other cases annotated thereunder and in the supplemental annotation in 79 A.L.R. 1364, the courts held that land vested immediately upon the death of the former owner dying intestate and without heirs and could not legally be sold for non-payment of taxes. *Puckett vs. State*, 1853, Tenn., 1 Sneed 355; *State vs. Goldberg*, 1904, 113 Tenn. 298, 86 S.W. 717; *Hanna vs. State*, 1892, 84 Texas 664, 19 SW 1008; *Arizona Land & Stock Co. vs. Markus*, 1931, 37 Ariz. 530, 296 P. 251; *Schmitz vs. New Mexico State Tax Commission*, 1951, 55 N. Mex. 320, 232 P.2d 986.

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CONCLUSION

It is the opinion of this office that the county collector may not sell for delinquent taxes land which has escheated to the State in accordance with Section 470.010, RSMo 1959. Title to such property vests in the State immediately upon the death of the former owner and Section 470.060 et seq. merely outlines the formal procedure necessary to secure a judicial determination that the title has in fact vested.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

JHD: sr

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