

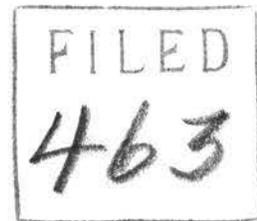
TAXATION:
TAXES:
COUNTY COLLECTOR:

- 1) Surplus money received from the sale of real estate for taxes must, when demanded by the person entitled thereto, be paid immediately to such person. 2) The owner of real estate sold for taxes is not required to execute a deed to purchaser or any other person at any time.

December 13, 1966

OPINION NO. 463

Honorable James Millan
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Mr. Millan:

In your letter of September 8, 1966, you requested an opinion from this office which reads as follows:

"The Pike County Collector and Pike County Treasurer have requested me to ask for an opinion from your office relative to a certain tax sale that took place here in Pike County.

"In this instance there is a tract of ground near Bowling Green upon which is situated a residence. The taxes were three years delinquent on this property and because it appeared that the property had been abandoned the Collector advertised this property for sale at a tax sale and it was sold at public auction in accordance with the Statutes for a sum considerably larger than the amount of taxes against the property.

"The owner of the property has now come in and has demanded from the Treasurer and Collector the surplus funds and has refused to execute a Deed to the purchaser at the tax sale. The said owner is taking the position that she has two years to redeem the property, if she wishes, under Section 140.340 of the Revised Statutes of Missouri, and that within the two years she has the option whether to simply accept the surplus and permit the Col-

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lector to give a Collector's Deed to the purchaser at the sale, or she can redeem under the Statues and pay to the purchaser the total purchase price plus 10 per cent, plus any improvements that he may have made on the property.

"Our question is, is it permissible for the Treasurer to pay over the said surplus to the record owner pending the two year period? If so, is the record owner obligated to give a Deed to the purchaser at the tax sale?

"I can find no authority for this, although Section 140.230 does provide for what happens in case the owner or owners cannot be found. This would seem to imply that if the owner can be found, as is our case, then the surplus or overplus is to be paid directly to the owner pending the exercise of the owner's option whether to redeem or not during the two year period.

"May we have an opinion on this or a copy of any previous opinion that may have been issued."

Section 140.280, RSMo 1959, provides in part:

"1. Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the collector, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises as to the proper person, the same shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto."

Under this section it is the duty of the county collector to pay any surplus he receives from the sale of real estate for taxes over and above the amount of taxes and costs of sale to the person entitled to said surplus, and, if there is any doubt as to the person entitled thereto, the same shall be paid into the county treasury to be held for the person entitled thereto.

Under Section 140.230, RSMo 1959, when any property is sold for taxes and there is a surplus received from the sale and the owner or owners or person representing the owners cannot

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be found, it is the duty of the collector to make a sworn written statement to the county court of this fact, and upon approval of the statement by the county court, the surplus is to be paid to the county treasurer to be held in trust for the owner of said property. It further provides that the county court shall compel the owners to make satisfactory proof that they are entitled to the money before the same shall be paid to them. This section applies only when the person entitled to the surplus is unknown or cannot be found.

Under Section 140.290, RSMo 1959, the county collector shall at the time of sale give to the purchaser a certificate of purchase describing the land, the amount of tax, penalty, interest and cost of sale and the excess in amount of the taxes and costs together with the names of the owners as provided therein.

Section 140.340, RSMo 1959, provides as follows:

"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 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.

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"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."

Under Section 140.420, supra, it is the duty of the purchaser or his assignee to secure a deed from the county collector at the expiration of two years from the date of sale, and under Section 140.410, RSMo 1959, it is the duty of the purchaser to have this deed recorded in the recorder's office within four years of the date of sale. If it is not recorded, the purchaser loses his right to a deed, reimbursement from the collector of the money paid and all interest in said real estate. *Journey v. Miler*, 250 S.W. 2d 164.

There is no law or statutory provision requiring the owner of real estate that is sold for taxes to execute any kind of a deed to the purchaser or to any other person at any time.

CONCLUSION

It is the opinion of this office: 1. That it is the duty of the county collector to pay immediately on demand to the person entitled thereto any surplus money received from the purchaser of real estate at a tax sale over and above the amount of taxes and costs of sale. If the money has been deposited with the county treasurer, it shall be the duty of the county treasurer to pay the surplus money to the persons entitled thereto when they have made said proof of their claims to the county court.

2. There is no law or statute requiring the owner of real estate sold for taxes to execute any kind of a conveyance to the purchaser of real estate sold for taxes at any time.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Very truly yours,


NORMAN H. ANDERSON
Attorney General