

THIRD AND FOURTH CLASS COUNTIES:
OWNING REAL ESTATE IN OTHER
COUNTIES:
SALE OF LAND BY SHERIFF:
REAL ESTATE:

The sheriff of any county in which real estate is located which is owned by another nonadjoining county of the third or fourth class in violation of section 49.285(1), must take possession of the land and sell it in the manner prescribed by section 49.285(1) unless otherwise ordered by a Circuit Court under section 49.285(2).

OPINION NO. 196

September 25, 1969

Honorable Granvil B. Vaughan
Missouri House of Representatives
Room 203B
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Vaughan:

We are in receipt of your request for an official opinion from this office asking whether the sheriff of a county has the power to sell land within its boundaries which is owned by another county of the third or fourth class.

Section 49.285, RSMo Cum. Supp. 1967, states:

"1. It shall be unlawful for any county of the third or fourth class to own real estate situated in any other county of this state other than a county which adjoins it after five years from October 13, 1963, or after five years from the date of acquisition of the real estate, whichever date last occurs. If any county subject to these provisions fails to dispose of such real estate within that time, the sheriff of the county in which the land is located shall take possession of the real estate and sell it at public auction from the place where and at the hour when partition sales are normally conducted after giving notice of the sale in the manner prescribed for partition sales both in the county where the land is located and in the county owning the real estate. . . ." (Emphasis added)

The statute quoted above makes it illegal for a third or fourth class county to own real estate in any non-adjacent county after five years from the date of acquisition of the land or from October 13, 1963, (whichever last occurs). In order to enforce the provisions of the statute, the sheriff is required to take possession of the unlawfully held land and sell it at a public auction. The

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statute directs that the sheriff "shall" take possession of the land and sell it. Because the Missouri General Assembly has specifically directed the sheriff to take possession of and sell land held in violation of the statute, it is only logical to conclude that the sheriff need not seek or obtain any further order or authority in order to comply with Section 49.285. Of course, the sheriff must follow the procedure specified in the statute in conducting the sale.

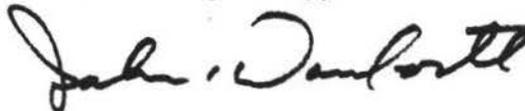
Section 49.285(2) provides that the Circuit Court of the county where the land is located may restrain the sheriff from enforcing the provisions of section 49.285(1) under certain circumstances. But as long as the sheriff is not under court order pursuant to section 49.285(2) it is his duty to take possession of and sell land which is held in violation of section 49.285(1).

CONCLUSION

It is the opinion of this office that the sheriff of any county in which real estate is located which is owned by another non-adjointing county of the third or fourth class in violation of section 49.285(1), must take possession of the land and sell it in the manner prescribed by section 49.285(1) unless otherwise ordered by a Circuit Court under section 49.285(2).

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas D. Vaughn.

Yours very truly,



JOHN C. DANFORTH
Attorney General