

TAXATION:

A person who holds an unassigned certificate of purchase from a tax sale made in 1963 does not have a lien on the real estate described in the certificate, if such real estate is again sold for delinquent taxes in 1970 or subsequent years.

OPINION NO. 5

January 12, 1971

Honorable O. L. Wallis  
State Representative  
District No. 152  
1331 Pershing  
Poplar Bluff, Missouri 63901



Dear Representative Wallis:

This is in response to your request for an official opinion on the question whether a person who holds an unassigned certificate of purchase from a tax sale purchaser in 1963 has a lien on the real estate described in the certificate if such real estate is again sold for taxes in 1970.

Section 140.280, RSMo 1969, provides that when real estate is sold for taxes, ". . . the purchaser at such sale shall immediately pay the amount of his bid to the collector, . . . ." Section 140.290 (1) provides that, "After payment shall have been made the county collector shall give the purchaser a certificate in writing, to be designated as a certificate of purchase, . . . ." Section 140.290 (3) is as follows:

"Such certificate shall be assignable, but no assignment thereof shall be valid unless endorsed on such certificate and acknowledged before some officer authorized to take acknowledgment of deeds and an entry of such assignment entered in the record of said certificate of purchase in the office of the county collector."

In State ex rel. City of St. Louis v. Bauman, 153 S.W.2d 31, 34 (Mo. en banc 1941) the court held that a certificate of purchase ". . . alone did not pass title for the obvious reason title to land sold for taxes under the law of this State remains in the owner during the period of redemption. . . ." 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. Section 140.420(1), RSMo 1969, provides:

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"If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyor, the collector of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which 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."

Section 140.410, RSMo 1969, provides it is the duty of the purchaser or his assignee to have the deed placed on record in the proper county within four years from the date of sale as follows:

"In all cases where lands have been or may hereafter be sold for delinquent taxes, penalty, interest and costs and a certificate of purchase has been or may hereafter be issued it is hereby made the duty of such purchaser, his heirs or assigns, to cause a deed to be executed and placed on record in the proper county within four years from the date of said sale; provided, that on failure of said purchaser, his heirs or assigns so to do, then and in that case the amount due such purchaser shall cease to be a lien on said lands so purchased as herein provided."

In *Journey v. Miler*, 250 S.W.2d 164, 165 the court quoted Section 140.410 and explained its purpose as follows:

". . . The apparent purpose of this statute is to require the holder of a certificate of purchase to obtain a deed within the specified period or lose his right to either a deed or reimbursement and thus settle the title, which otherwise remains indefinite during that period. See *State ex rel. and to Use of Baumann v. Marburger*, 353 Mo. 187, 182 S.W.2d 163."

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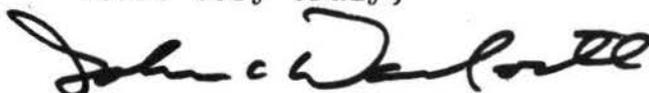
It appears, therefore, that the holder of the certificate of purchase, having failed to obtain an assignment of the certificate and having failed to obtain a deed within the specified period has no lien on the real estate described in the certificate. Please find enclosed a copy of an opinion dated March 8, 1940, issued by this office to Mr. W. A. Holloway holding that the failure of a certificate holder to have executed and recorded a deed within four years from the date of sale, causes the amount due such purchaser to cease to be a lien on the lands and lots for the particular years involved.

#### CONCLUSION

It is the opinion of this office that a person who holds an unassigned certificate of purchase from a tax sale made in 1963 does not have a lien on the real estate described in the certificate, if such real estate is again sold for delinquent taxes in 1970 or subsequent years.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 41  
3-8-40, Holloway