TAXATION: Lands assessed for taxation under a void description can not be corrected in a deed by the Collector, so as to convey good title to the lands intended to be assessed and sold.

October 12, 1942

Mr. M. M. Brees
Collector of Revenue of Knox County
Edina, Missouri

Dear Mr. Brees:

This is to acknowledge your inquiry of October 9, 1942, relating to the Jones-Munger Law, which is as follows:

"Mr. Tom B. Brown
Prosecuting Attorney of Knox County Mo.
Dear Mr. Brown:

"In 1938 this office advertised in the tax certificate sale of delinquent tax the following real estate.

"The tax records of this county described the property in question as follows, and it was so advertised and tax certificate issued to the purchaser.

" 8 acres NE cor SW SE. Section 12, Township 62, Range 10.

"Before deed was made in 1940 it was discovered the correct description should have been, 8 acres NE cor NW SE. Section 12, Township 62, Range 10.

"We wish to know if a corrected deed can be furnished to the purchaser of this property or how title can be furnished. The original owners have made no move to redeem or seem to be interested in any way, but the purchasers at tax sale do want title to what they and all parties at the time of sale thought was the land in question."

Eight (8) acres of a quarter section of land is merely an indefinite part of such quarter section. From which part of such area is the above acreage to be carved? A surveyor could not locate land described in such manner.

In the case of Lowe v. Ekey, 82 Mo. 286-7 in passing on this question the Court held:

> "* * * The tax deed is void, and utterly insufficient to convey that part of the northwest quarter of northeast quarter, section fifteen, township forty-two, range one east, which lies north of the Union road, and west of the Atlantic & Pacific R. R., for the following reasons: 1. Because it does not purport to convey 13 15-100 acres in northwest quarter of northeast quarter of said section fifteen, lying north of said Union road, and west of said railroad, when the land sued for is but about half of the land in said northwest quarter of northeast quarter lying north of said Union road, and the deed does not indicate in what part of the tract north of the Union road the 13 15-100 acres are located. City of Jefferson v. Whipple, 71 Mo. 519; Nelson v. Goebel, 17 Mo. 161; Alexander v. Hickox, 34 Mo. 496. There was no evidence tending to show that the land was known by the description contained in said tax deed. The proceedings in tax sales are not viewed as on the same footing with proceedings on execution in ordinary suits. Blackwell on Tax Titles, p. 301, side page 304. See, also, Blackwell on Tax Titles, (3Ed.) top pp. 379 to 381, side pp. 381 to 383 and top pp. 123 to 129, side pp. 124 to 130.* **"

Such description is bad and cannot be corrected during any step of the action in the foreclosure of a general lien for delinquent taxes on real estate. Certainly such description is bad when there is an additional error in using "SW for NW."

The above question was passed upon by the Supreme Court in the case of State v. Childress, 134 S.W. 2d l.c. 139 in the following language:

> "*** Respondent, it would seem, proceeded at the trial on the theory that the state had a lien for taxes on the land, regardless of the description on the assessor's books, or on the collector's books, or in the notice of sale, and that if the land was correctly described in the petition and then it was shown by oral evidence that such land was, in fact, the land owned by defendant, that such was sufficient and would cure any defect in description on the tax books or in the notice of sale.
>
> "The state's lien for taxes 'does not accrue and become a fixed encumbrance until the amount of the tax is determined by an annual assessment of the land and annual levy of the tax.' McAnally v. Little River Drainage District, 325 Mo. 348, 28 S.W. 2d 650, 651; Sec. 9747, R. S. 1929, Mo. St. Ann. Sec. 9747 p. 7868.
>
> "State ex rel. Flentge v. Burrough et al., 174 Mo. 700, 74 S. W. 610, was an action 'for back taxes.' The tax bill described the land as 'pt. out lot 54, survey 2199.' It was held that such description would not support a judgment for taxes, and that a correct description in the petition would not validate or cure such description. See also State ex rel. Wyatt v. Wabash R. Co. et al., 114 Mo. 1, 21 S.W. 26; State ex rel. Ward v. Linney, 192 Mo. 49, 90 S. W. 844; State ex rel. Smith v. Williams et al., Mo. Sup., 216 S.W. 535; State ex rel. and to Use of Ross v. Lamb, Mo. Sup., 25 S. W. 2d. 83."

CONCLUSION

THEREFORE, it is the opinion of this department that a sale of land made under the Jones-Munger Law and described in the above manner is fatally defective and that a deed by the collector with a proper description of the lands intended to be assessed and sold would not validate or cure such description.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General