

TAXATION:  
DELINQUENT LANDS:  
ADVERTISEMENT:

Delinquent lands may not be sold for taxes to the highest bidder at the third time they are offered for sale unless they have been properly advertised at the first and second sales in which they are offered.

September 20, 1938

Hon. Paul N. Chitwood  
Prosecuting Attorney  
Reynolds County  
Centerville, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the following questions:

"1. What is the legal effect of a failure to advertise the delinquent land before sale, in succession as law provides; for example, if land is advertised for sale under this law one year and no bid is received; the same land is not advertised the second year, but is advertised the third year? Will the failure to advertise and offer the land for sale as provided by this law invalidate the sale?

"2. The third time the Collector offers the same land for sale for delinquent taxes, it is sold to the highest bidder for cash. Now is the record owner (or person who lets the land sell for taxes) entitled to bid on such lands, have them struck off to him for a very nominal sum, and then demand a Certificate of Purchase?"

On the second question, we find that this office on October 16, 1936, by an opinion to Mr. J. B. Greer, County Collector of Pettis County, covered the same subject, and we are enclosing a copy of this opinion for your information.

As to your first question, we find that the provisions of Section 9952b, Laws of Missouri, 1933, page 430, are applicable. This section is as follows:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. And it shall only be necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost due thereon, each year separately stated, and the land therein described shall be described in forty-acre tracts or other legal subdivision, and the lots shall be described by number, block, addition, etc.; provided, however, that if a part or parts of any forty-acre tract or other legal subdivision or lot is assessed on the tax books to two or more parties as owners thereof, then, as to such land or lots, such list shall be so prepared and separated. To such list shall be attached and in like manner so printed and published a notice that so much of said lands and lots as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of sale will be sold at public auction at the courthouse door of such county, on the first Monday in November next thereafter, commencing at ten o'clock of said day and continuing from day to day thereafter until all are offered. The county collector shall, on or before the day of sale, insert at the foot of such list on his record a copy of such notice and certify on said record immediately following such notice the name of the news-

paper of the county in which such notice was printed and published and the dates of insertions of such notice in such newspaper. The expense of such printing shall be paid by the purchaser or purchasers of the lands and/or lots sold and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed the legal rate for the entire notice, as such legal rate is fixed by Sec. 13773, which cost of printing at the rate specified shall be taxed as part of the costs of the sale of any land or lot contained in such list and disposed of at such sale, and the total cost of printing such notice shall be prorated against all such lands or lots so sold or redeemed prior to any such sale."

This section specifically sets out the duties and the procedure for the county collector to follow in advertising delinquent lands for sale for taxes. Each and every step of this procedure must be followed by the collector before he can acquire jurisdiction to sell delinquent lands for taxes.

The rule is well settled in this state, and as stated in the case of *Spurlock v. Dougherty*, 81 Mo. 171, l. c. 181, wherein the court in speaking of a notice of sale of delinquent lands for taxes said:

"The notice is the indispensable prerequisite, and without it the court had no jurisdiction. In *Large v. Fisher*, 49 Mo. 307, Judge Adams says: 'A regular notice published as the law requires, is the very foundation of the collector's authority to sell. In selling lands for taxes, he is executing a mere naked statutory power, and the rights of the citizen

to his property cannot be divested by this kind of sale, unless it appears affirmatively from the form of the collector's deed that all the prerequisites of the statute have been strictly pursued. This is the settled law of this State.' (Citing cases.) "

The rule for construction of such statutes is also set out in 26 R. C. L., page 394, Section 354, as follows:

"There is no presumption in favor of the validity of a tax title based upon a sale by a collector as an administrative act. One who claims title to the property of another by virtue of a sale for nonpayment of taxes is bound to show the existence of every fact necessary to give jurisdiction and authority to the officer who made the sale, and a strict compliance by him with all things required by the statute in carrying out the sale. \* \* \*"

Section 9953, Laws of Missouri, 1933, page 432, provides as follows:

"If at the first offering of sale of any tract of land or lot under the provisions of this act no person shall bid therefor a sum equal to the delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact in his record of sale and the county collector shall note a recital thereof in his record containing the list of delinquent lands and lots, and said tracts of land or lots shall be again offered for sale, at the next sale of delinquent lands and lots as in this act provided, if such lands or lots be at such time delinquent. If at the second offering for sale no person shall bid therefor a sum equal to

the then delinquent taxes thereon with interest, penalty and costs, then the clerk of the sale shall note such fact upon his record of the sale, and the county collector shall enter a recital of such fact in his record book containing the list of delinquent lands and lots."

This section definitely requires that the delinquent lands which are not sold at the first sale shall again be offered for sale at the next sale of lands and lots as in this act provided. As stated in Section 9952b, supra, of this act, it is necessary to advertise the lands each time they are offered for sale, and there is no doubt that the lawmakers, by the language of said Section 9953, intended that the procedure for offering the delinquent lands for sale the second time should be the same as prescribed for offering them for sale the first time. That is, the county collector, before he can legally offer delinquent lands for sale for taxes the second or third time, must at each time they are offered for sale have advertised them as provided by Section 9952b, supra.

26 R. C. L., page 397, Section 356, states the rule as follows:

"With respect to the proceedings of the collector in selling the property, no distinction is drawn between mandatory and directory requirements of law. Unless the collector acts as the law directs he acts without authority and the sale is invalid, even if the requirement which he failed to comply with was not imposed for the protection of the owner of the land assessed. \* \* \* The validity of a tax sale depends wholly upon compliance with the statutes authorizing the sale. \* \* \*."

Section 9953a, Laws of Missouri, 1933, page 432, provides as follows:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell the same to the highest bidder, and the purchaser thereof shall acquire thereby the same interest therein as is acquired by purchasers of other lands at such delinquent tax sales."

This section authorizes the collector to sell delinquent lands to the highest bidder when they have been offered for sale two years successively and they were not sold because of the insufficiency of the bid to pay the taxes, interest, penalty and costs.

#### CONCLUSION

From the foregoing, we are of the opinion that if the county collector fails to advertise delinquent lands for sale at the second time they are offered for sale, he has no jurisdiction or authority to make such offer and sale, and that all of his proceedings in connection with such offer and sale are null and void. We are further of the opinion that if the county collector offers for the third time delinquent lands for sale for taxes which have not been properly advertised for sale the first, second or third year in which they are offered, he is without jurisdiction to offer such lands for sale to the highest bidder as provided by Section 9953a, supra, and his acts and proceedings are null and void. However,

if at the third sale such delinquent lands have been properly advertised, they may be sold if the amount of the bid is enough to pay the delinquent taxes, interest, penalty and costs, even though the lands were not properly advertised at the first and/or second sale in which they were offered.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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