TAXATION: COLLECTOR'S DEED: County Collector may issue deeds of correction for deeds which have been issued for lands which have been sold for delinquent taxes.

August 12, 1941.

6-14

Hon. V. O. Coltrane, Jr.
Assistant Prosecuting Attorney
County of Greene
Springfield, Missouri

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Dear Sir:

This will acknowledge your letter of recent date, requesting an opinion from this department on the following facts:

> "I would like to obtain an opinion from your office on a question that has arisen in Greene County, Missouri, in regard to the sale of land by the County Collector for delinquent taxes. The County Collector of said county sold certain land for delinquent taxes, interest, etc., under the provisions of Section 11130 R. S. Mo. 1939; said sale being a 'third' sale; said Collector thereupon executed and delivered to the purchaser of the land a deed similar in form to the one enclosed herewith.
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> "Honorable Guy Kirby, Judge of the Circuit Court of Greene County, Missouri, recently held that the aforesaid deed did not convey title to the purchaser for the reason that the Collector of Greene County, Missouri, was the grantor in said deed instead of the State of Missouri; that the Collector had no title to convey, and that said deed should be made in the name of the State of Missouri. Section 11150 R. S. Mo. 1939

sets out a form for a deed by the County Collector, which form names the State of Missouri as party of the first part, or grantor.

"The question that has arisen and which is presented to your office for an opinion is whether or not the County Collector can execute deeds in the name of the State of Missouri correcting deeds that have heretofore been executed and delivered wherein the Collector was the grantor instead of the State of Missouri. Numerous requests have been made to the Collector asking for correction of deeds."

The authorities which you have cited in your request sustained the proposition that a collector may execute and issue a deed of correction in cases where the original deed for delinquent lands sold for taxes is incorrect. These authorities are stated as follows:

"It is the general rule that after the execution of a tax deed which is irregular or does not conform in its recitals to the facts, as exhibited by the tax records, another deed conforming to the facts and regular upon its face may be executed and will be valid."

Ann. Cas. 1912 B, page 952.

"When there has been a sale for nonpayment of taxes carried out in accordance with law, and all the conditions have been complied with so as to entitle the purchaser to a deed of the premises, the power of the collector to execute and deliver a valid deed is not exhausted by the execution and delivery of an invalid one, and if the deed first delivered is defective and invalid, the collector may execute and deliver a substitute deed, which, if drawn up in accordance with the statutory requirements, will

be as effective to pass the title as if the prior invalid deed had never been delivered. The length of time that has elapsed since the first deed was issued does not affect the right to issue a second one."

26 R. C. L., Sec. 379, p. 42.

"Although there is authority to the contrary, it seems to be the general rule that the power vested in an officer to execute a tax deed is not exhausted until a deed is made in compliance with the law, and the making of an insufficient deed does not exhaust his power where the facts exist upon which a valid deed may be made. Thus a treasurer or collector who has made a tax deed so irregular or imperfect as not to pass title may, where the law has been substantially complied with, execute a second or other deed correct in fact and regular in form so as to invest the purchaser with the legal title, and if he refuses, he may be compelled to do so by mandamus. But this authority cannot be used to cure defects in the anterior proceedings or misstate the prior proceedings, nor can a second or other deed so operate as to divest rights which have accrued prior to its execution."

61 C. J. Sec. 1870, p. 1333.

"Even where no proper deed was made in pursuance of the tax sale, the owner of the land, made a defendant in the tax suit, and his heirs after his death are required to take notice of the tax suit and sale; and where they have made no improvements or expended any money on the land, and the grantees of the purchaser at the tax sale have taken possession by authority of that sale, they are entitled to a corrected deed from the ex-sheriff twenty-three years after the sale."

In the case of Smith v. Vickery, 235 Mo. 413, l. c. 422, the court, in passing on the authority of the Sheriff to execute an amended deed, said:

> "Plaintiffs' main objection to the amended sheriff's deed is that it was not made under an order of court and was not made timely; that it was invalid because made nearly twenty-three years after the tax sale took place. To the first of these propositions, we will say that an ex-sheriff is not required to obtain an order of court before he makes an amended deed to land which he has sold while in office. In making such amended deed, he proceeds under authority derived from the common law, to complete and make effective acts which he began or attempted to perform while in office. (Ozark Land and Lumber Company v. Franks, 156 Mo. 673, l. c. 689.)
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> "No sufficient reason has been shown in this case why Ex-Sheriff Scott should not have made the amended deed twenty-three years after the sale on which said deed is based. * * * * * * *"

## CONCLUSION

We are, therefore, of the opinion that the county collector may execute correction deeds in the name of the State of Missouri for deeds which have heretofore been executed and delivered, wherein the collector was the grantor instead of the State of Missouri by the collector, etc.

In view of the fact that some authorities which we will cite hereafter may not have been called to the attention of the court on the question of the sufficiency of the deed which the collector has executed for delinquent lands sold for taxes, we submit the following authorities and statements. The granting clause in the collector's

deed for lands sold for delinquent taxes at the third sale does not follow the form of the granting clause which was prescribed by the General Assembly for the collector to use in cases where lands are sold at the first sale. Section 11150 R. S. Mo. 1939.

Apparently the circuit court took the view that any deed the collector issues for delinquent lands sold for taxes should contain this same language showing that the deed was made in the name of the State of Missouri because of the language contained in Section 11149 R. S. Mo. 1939 which provides, in part, as follows:

> "* * * 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, * * * * *."

However, Section 11150 R. S. Mo. 1939 would indicate that the county collector execute this deed. Referring to the deed this section reads, in part, as follows:

> "Such conveyance shall be executed by the county collector, under his hand and seal, witnessed by the county clerk and acknowledged before the county recorder or any other officer authorized to take acknowledgments * * * * * * * *.
>
> "Therefore, this indenture, made this ..... day of ..... 19 ....., between the State of Missouri, by C. D., collector of said county, of the first part, and the said A. B., of the second part, * * * * * * * * * * * * * * * * * *.
>
> "State of Missouri, ..... County, ss:
> Before me, the undersigned, ..... ....., in and for said county, this day, personally came the above-named C.D.,

collector of said county, and acknowledged that he executed the foregoing deed for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and seal this ..... day of ....., 19..... (L.S.)"

Section 11151 R. S. Mo. 1939 authorizes a variation in the form of the deed referred to in Section 11150, supra. This section reads, in part, as follows:

"In case circumstances should exist requiring any variation from the foregoing form, in the recital part thereof, the necessary change shall be made by the county collector executing such deed, and the same shall not be vitiated by any such change, provided the substance be retained. * * * * *"

In case of the failure of the General Assembly to prescribe a form of deed, then the "four corners" rule of construction is applicable to a tax deed. Robinson v. Levy, 217 Mo. 498, l. c. 520.

The question as to who should convey in a tax deed is passed on in the case of Knox v. Huidekoper, 21 Wis. 534, l. c. 535-6, in the following language:

"The first objection is, that the deed did not purport to be signed by any officer known to the laws at the date of its execution. In the testatum clause of the deed, the officer describes himself as 'the clerk of the county board of supervisors of the county of Milwaukee,' and signs and executes the deed under the corporate seal of the county, as 'clerk, board of supervisors, Milwaukee county, State of Wisconsin.' Now it is claimed that inasmuch as the 3d sec. of ch. 129,

> Laws of 1861, declares that 'the county board of supervisors' shall be a body corporate known by and under the name and style of the county board of supervisors of (naming the county)' that there was no such officer as 'clerk, board of supervisors,' etc., and that this mistake in the designation of the title of the officer renders the deed invalid. We consider the objection quite untenable. In the law of 1859, which prescribes the form of a tax deed (sec. 50, ch. 22), the office is designated as 'the office of the clerk of the county board of supervisors of the county of _____;' while in the 51st section the officer is spoken of as 'the clerk of the county board of supervisors,' and 'the clerk of the board of county supervisors.' The 6th section of the act of 1861, above referred to, provides for 'the first election for clerk of the board of county supervisors,' when but a moment before the legislature had enacted that the technical corporate name of the board should be 'the county board of supervisors of _____.' From these instances, and numerous others which might be cited from our statutes, if necessary, it will be seen that no certain title or description of the office of the clerk is given, he being indiscriminately named 'clerk of the county board of supervisors,' 'clerk of the board of county supervisors,' or 'clerk of the board of supervisors,' when referred to by the legislature. Chapters 398 and 399, Laws of 1862; chapters 290 and 292, Laws of 1863; chapters 120 and 460, Laws of 1864; chapters 124 and 264, Laws of 1865. Either one of these descriptions is sufficient to identify the officer and show his relations to the board, and we think fully meets the requirements of the law."

The same question was passed on by the Supreme Court of the State of New York based upon a statute of the Laws of New York for 1813, at page 517, which is in part as follows:

> "* * * * the comptroller shall, at the expiration of the said two years, execute to the purchaser, his heirs or assigns, in the name of the people of this state, a conveyance of the lands so sold, which conveyance shall vest in the person or persons to whom it shall be given, an absolute estate in fee simple, * * * * * *."

Construing said section the court, in the case of Bank of Utica v. Mersereau, New York Reports, Barbour's Chancery, Vol. 3, at page 576, said:

> "I do not agree with the vice chancellor that the comptroller's deed is void, either as to its form, or because it does not specify the year in which the taxes were laid for the non-payment of which the premises were sold. The provision in the revised statutes directing the comptroller to execute a conveyance of the property sold, in the name of the people of the state, is not new, but was contained in the revised laws of 1801 and of 1813. (1 Rev. Laws of 1801, p. 555. 2 Rev. Laws of 1813. p. 517.) And I believe the comptroller's deeds upon tax sales have been in the same form in this respect under all of these laws. They have so far back as I have examined, which is more than a quarter of a century. And thousands of titles now depend upon conveyances executed in the same form as the deed in this case. When we recollect, too, that deeds in this form have been executed by such men as Chief Justice Savage, Mr. Justice Marcy, and Silas Wright, who have heretofore filled the office of comptroller, and probably with the sanction of the several distinguished jurists who have from time to time occupied the station of attorney general of the state, and that many recoveries have been had in our courts upon such deeds without objection, it is too late to pronounce such deeds invalid, upon a mere

technicality, suggested for the first time by the counsel for the complainants in this suit. * * * * *"

In the case of Sheets v. Selden's Lessee, 69 U. S. 822, l. c. 825, a question very similar to the one which is raised here was before the court and the court said:

"The objection to the deed of the Governor and Auditor is, that it is not executed in the name of the State, and does not cover the premises in controversy.

"It is true that the form of the deed is not in literal compliance with the language of either of the Acts of Indiana; it is not in terms between the State, of the one part and the assignee of the purchasers of the property of the other part; but it shows a completed transaction between the State and the grantee named. It refers to the Acts of the Legislature authorizing the sale; it sets forth a sale made pursuant to their provisions; it mentions the joint resolution affirming the sale; and it declares that the Governor and Auditor, in virtue of the power vested in them by the Acts and joint resolution, convey the property sold, 'Being all the right, title, interest, claim and demand which the State' held or possessed therein.

"In the execution of this instrument the Governor and Auditor acted officially and not personally, and in our judgment the deed was sufficient to pass the title of the State they represented. And it may be stated generally that when a deed is executed, or a contract is made on behalf of a State by a public officer duly authorized, and

> this fact appears upon the face of the instrument, it is the deed or contract of the State, notwithstanding that the officer may be described as one of the parties, and may have affixed his individual name and seal. * * * * * * * * *"

In the case of Cruzen v. Stephens, 123 Mo. 337, l. c. 347, the court quoted a deed, which did not mention the State of Missouri, in the following words:

> "'Now, therefore, in consideration of the premises, and of the sum of $97 to me, the said sheriff, in hand paid by the said N. G. Cruzen, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I, Gabe W. Cox, sheriff as aforesaid, do hereby assign, transfer and convey unto the said N. G. Cruzen all the above described real estate so stricken off and sold to him that I might sell as sheriff as aforesaid, by virtue of the aforesaid judgment, execution and notice.
>
> "'To have and to hold, the right, title, interest and estate hereby conveyed, unto the said N. G. Cruzen, his heirs and assigns, forever, with all the rights and appurtenances thereto belonging. In witness whereof,' etc."

In passing on the sufficiency of said deed, the court said:

> "It is enough to say that we regard the terms of this deed as sufficient to transfer to plaintiff the interests of the defendants in the tax suit, under the statute law touching the form of such conveyances."

The form of the deed for the collector to use for sale of lands sold for delinquent taxes at a third sale was one that was prescribed and approved by the State Tax Commission by virtue of the provisions of Section 11164 R. S. Mo. 1939. This form was prescribed by the Tax Commission because the lawmakers failed to prescribe a form which could be used at the third sale of lands offered and sold for delinquent taxes.

For the purpose of supporting the view that the collector's deed, herein referred to, complies with the statute, we respectfully submit the foregoing authorities.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

(Acting) Attorney-General

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