COUNTY COLLECTOR: All statutory requirements in sale for delinquent taxes must be complied with exactly as prescribed. A sale held in any other manner renders the transaction void.

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July 6, 1943

7/17 FILED 19

Honorable Phil H. Cook
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Mr. Cook:

This office is in receipt of your letter together with a request from Mr. Leo A. Wollenman, County Collector of Lafayette County. The full text of Mr. Wollenman's letter is as follows:

> "This office desires information concerning the status of certain tracts, lots or parcels of land that are now carried on our delinquent land tax book.
>
> "The law provides that the Collector is required to advertise and offer for sale these delinquent properties, and we are not sure as to the status of some of these properties.
>
> "In November 1939 and 1940 some of these properties were offered for sale by former Collector Sam Smith, and at the third sale the properties were bid in by Wm. H. Cohrs as Trustee for Lafayette County.
>
> "For two years, 1941 and 1942, the record of these properties was maintained separate from the other delinquent properties, and kept in the back of the land book. The properties were sold for the taxes due for the year 1930 and later. Mr. Cohrs would not accept the trusteeship of these properties, claiming that the sales were not legally conducted,

> and that Lafayette County has no legal authority to hold or dispose of these properties. No deeds to these properties were made by the Collector or accepted by the Trustee.
>
> "Due to the fact that this office will soon be required to advertise and offer for sale delinquent properties now on the delinquent book. In view of the above, can we again advertise the properties heretofore advertised and sold to Mr. Chors as Trustee, or, are these properties now out-lawed."

An examination of the procedure under delinquent and back tax matters in the State of Missouri reveals the fact that the following statutes apply to the problem as outlined by your collector: Sections 11126, 11127, 11129, 11130, and 11131 R. S. Mo., 1939. We will proceed to take these sections up in detail together with decisions as they apply thereto. You will note that these sections are not quoted because of their very great length and for the further reason that you are already familiar with the details of same.

At Section 11126 we find the provision that the collector shall publish a list of delinquent lands before the sale of any lands without judicial proceedings to enforce a lien of the state for taxes. In its express terms this statute provides in detail how property shall be offered for sale. It gives express directions as to the mode and manner of the sale and leaves no doubt as to the matters pertaining to publication prior to the sale.

We direct your attention to the decision of Schlafly v. Baumann, 341 Mo. 755, 108 S. W. 2d 363, 366:

> " * * * * * Statutory provisions prescribing the time and place of tax sales have been strictly

> construed in favor of the taxpayer and strict compliance therewith rigorously exacted. The maxim, 'Expressio unius est exclusio alterius,' is especially apropos. Keane v. Strodtman, 323 Mo. 161, 167 (II), 18 S. W. (2d) 896, 898.
> * * * * * * * "

The court in Rubey v. Huntsman, 32 Mo. 501, 504, said:

> " * * * * * The 9th sec. of the 15th art. of the act concerning Revenue (R. C. 1845, p. 949,) provides that the sale shall be made 'before the courthouse door of the county.' It is well established in this State that a person claiming to hold land under a sale for taxes can only maintain his title when the law has been strictly pursued. It is immaterial whether it was more convenient to all persons, or better in any respect to sell within than before the courthouse; the law has prescribed the place of sale, and that is the only proper place; it is so because the law has said so, and there can be no reasoning about it. (Reed v. Morton, 9 Mo. 868; Donohoe v. Veal, 19 Mo. 331; State, ex rel. Donohoe, v. Richardson, 21 Mo. 420.)"

This view is also held by the court in McNair v. Jenson, 33 Mo. 312, and the case of Rubey v. Huntsman, supra, is cited as authority. Further, in the case of Keene v. Barnes, 29 Mo. 377, 378, the court held the following:

> "A county collector making sale of land for taxes under the act of February 13, 1847, (Sess. Acts, 1847, p. 119, sec. 10,) was bound to make his sales before the door of the court-house of the county; so also he was required to set up at the court-house

> door a copy of the advertisement by the register of lands of all the unredeemed lands of the state for sale, also to set up at the most public places in the county the twenty slips received from the register setting forth the lands and lots advertised in each county. If these requisites were not complied with, the sale by the collector would be invalid."

In Beckwith v. Curd, 347 Mo. 602, 148 S. W. 2d 800, 803, the Court said:

> "We think the rule is well established that when an administrative officer sells property at a tax sale, a strict compliance with the statutes is required. The omission of the 1931 and 1932 taxes from the notice of sale voided the sale by the city to the respondents because the notice did not include all the delinquent taxes as required by Section 6208, supra."

And in State ex rel. Hayes v. Snyder, 41 S. W. 216, 139 Mo. 549, the Court said:

> "The State has two methods by statute for collecting taxes against real estate. One is by suit to enforce the State's special lien against the specific piece of property; by the other, the collector is given power to seize and sell personal property, without judgment, for the payment of all taxes."

At Section 11127 the period of sale and manner of bids is outlined in detail, and the decisions as they apply to this particular section may be found as follows: Roth v. Gabbert, 123 Mo. 21, 27 S. W. 528; Reeds v. Morton, 9 Mo.

878; Comfort v. Ballingal, 134 Mo. 281, 35 S. W. 609, 612, in which the Court said:

> "When the process of collecting taxes by the sale of lands for their nonpayment is a summary remedy, as in the case at bar, and the law requires that certain things be done by the officer making such a sale, in connection therewith, nothing less than a strict compliance with such requirements will suffice; and, unless it appear that the law has been strictly complied with, the sale will be void. * * * * * * "

And Kries v. Holladay-Klotz Land and Lumber Co., 121 Mo. App. 184, 98 S. W. 1086, 1088, which cites Reeds v. Morton, supra, and in which the Court stated the following:

> " * * * * * We quote from Judge Cooley's work: 'At the common law it was necessary that one who claimed to have obtained title to property of another under proceedings based upon a neglect of public duty should take upon himself the burden of showing that the duty existed and had not been performed, and that in the consequent proceedings the law had been complied with by those who had them in charge. Expecially if the proceedings would operate with severity, and be in their effects something in the nature of a forfeiture, the law was strict in its requirement that his evidence should exhibit the proceedings from step to step, and show that each of the safeguards with which the statute had surrounded the delinquent for his protection in this very emergency had been duly observed. And this tenderness for his interests appeared but reasonable. Of what service could it be that safeguards were provided, if observance was not essential—if a careless or incompetent officer might overlook or

disregard them with impunity, and deal with the property of the citizen as if his position as an officer of the government vested him with a dispensing authority over legislation, and authorized him to make, in his discretion, a law for the case as he proceeded. This rule of the common law has not been modified by decisions, and is still recognized and enforced where statutes have not changed it. It may consequently be said to be the general rule that the party claiming lands under a sale for taxes must show affirmatively that the law under which the sale was made has been substantially complied with, not only in the sale itself, but in all the anterior proceedings.'

"The doctrine thus expressed has been declared in substance by the Supreme Court of this state from its earliest decisions in construing every enactment which has been on our statute books regarding the sale of land for taxes. Morton v. Reeds, 6 Mo. 64; Reeds v. Morton, 9 Mo. 878; Yankee v. Thompson, 51 Mo. 234. But the reason for the acceptance of the doctrine defines its limits. It exists for the protection of the owners of property whose interests are sacrificed by judicial sales for their ommissions of public duty. It is for them the law requires various acts to be done before their property can be sold; and if some official fails to perform one of the essential acts, the legal rights of the citizen having been ignored to that extent, his property cannot be taken from him. Hence we think the rule applies only in cases where the contest is between the purchaser at the tax sale, or some one claiming under him, and the original owner or person claiming under the latter, or, at most, in controversies between the holder of the tax title and some one asserting another title. It ought not to be applied in a case between the owner under a sale for taxes and an intruder who injuries the

inheritance without any claim of title or pretense of right to enter on the premises. * * * "

Coming now to Section 11129, which concerns itself with the reoffering of delinquent lands and lots where they have not been sold under the first sale, we find it unnecessary to do more than cite this section. Also Section 11130 contains the provisions of the third sale, and Section 11131 contains the provision that the county may bid in delinquent lands to protect themselves.

CONCLUSION

From the statutes cited and the decisions which we have offered for your information we conclude that all of the prerequisites must be shown to have existed to enable the collector to hold the sale. The sale must be held exactly as prescribed by statute; and if conducted in any other manner, the conveyance is void. We are further of the opinion that, since in the present instance no conveyance was ever made nor an acceptance given by the trustee, there has not been a compliance with the statutes in the sale of this property. Since we conclude that no sale was ever held in the present instance, we further find that no statute of limitations could run in the present instance.

Respectfully submitted,

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APPROVED:

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