TAXATION AND REVENUE: Duties enjoined upon County Collectors under the provisions of Article 9 of Chapter 74, R. S. Mo. 1939.

August 3, 1945

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Honorable Clarence Evans, Chairman
State Tax Commission of Missouri
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter dated July 23, 1945, requesting an opinion of this office, and reading as follows:

"We have been asked the following questions by Mr. Jesse E. Smith, County Collector of Greene County, Missouri, relative to the Jones Munger Law:

"Sec. 11132.
"How soon after the sale shall the Collector turn the surplus funds (surplus bids above taxes and expenses of sale) to the Treasurer? Who is the person entitled to the surplus, when may he have it and what is the effect of liens, mortgages, judgments, etc.? If the Collector has doubt as to whom he shall pay the surplus or who is entitled thereto, does he have to obtain permission from any county officer or court to transfer the money to the Treasurer or does he act on his own authority?

"Sec. 11145.
"Does the party redeeming the property have to pay the full amount of the purchase price including taxes, expenses of sale, interest and the amount of the surplus bid? If he must pay the surplus bid in addition to the taxes etc., what does

the Collector do with the additional surplus then in his hands, he also having the surplus originally paid by the purchaser or same being in the hands of the Treasurer? According to the Certificate of Redemption as supplied by the Tax Commission there is no space provided to insert the surplus, but Sec. 11145 reads 'the full sum of the purchase money named in the certificate'?

"Sec. 11159.
"How long is the Collector supposed to hold the surplus funds after sale before making a list of same and paying the surplus into the County Treasury? Does the fact that the owners of the land at time of sale are known, even though the Collector has reason to believe that because interests other than the owners in the land will prevent his claiming the surplus, mean that the Collector does not turn the surplus applying to this particular piece of land over to the Treasurer along with the balance of such funds in his hands?

"We would greatly appreciate your opinion of these sections."

In the consideration of the matters involved, we will make the same division in accordance with the three statutes referred to in your letter as you have used in your opinion request.

Section 11132, R. S. Mo., 1939

Section 11132, R. S. Mo., 1939, reads as follows:

"Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the collector, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises as to the proper person, the same

> shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto. In case the purchaser fails to pay his bid, the land shall be again forthwith offered for sale the same as if no sale had been made, and the purchaser so failing shall forfeit and pay for the use of the distributive county school fund of the county a penalty of twenty-five per cent of the amount of his bid, to be recovered by action of debt in the name of the collector, before any justice of the peace, or court having jurisdiction, and the prosecuting attorney shall conduct such suit, and for his services a fee of five dollars shall be taxed against such delinquent purchaser."

No definite time is expressly fixed by the provisions of this statute as to when the collector shall pay the surplus to the treasurer. The general rule with respect to the time of performance of duties imposed upon an officer, where such time is not expressly fixed by the law imposing the duty, is found in Officers, 46 C. J., par. 305, from which we quote:

> "Diligence, integrity, and intelligent discretion in the discharge of their duties are required of public officers, particularly where the rights of the public may be jeopardized by their neglect, * * *."

To the same effect is the decision in the case of State ex rel. v. Turner, 42 S. W. (2d) 594, l. c. 598, from which we quote:

> "Where a statute requires an act to be done, it must be performed with a reasonable degree of diligence, care, and prudence. Failure to so perform that duty is in law negligence."

This principle was again reiterated by the Supreme Court of Missouri in the case of State ex rel. v. Priest, 152 S. W. (2d) 109, l. c. 112:

> "Due diligence on the part of the clerk, of course, requires that he perform such acts as he is required to perform by law with reasonable celerity and within a reasonable time."

From the above cases, we come to the conclusion that the collector is entitled to a reasonable time after the receipt of the surplus funds by him in which to pay the same to the treasurer. "Reasonable," in the premises, would no doubt be a relative term, particularly in view of the fact that the collector is first required to pay the surplus to any person entitled thereto, and it is only when a doubt exists in his mind as to the person entitled to such surplus, or a dispute arises as to the proper person, that the collector pays the surplus to the treasurer.

In this connection, we direct your attention to Section 11159, R. S. Mo., 1939, which will be discussed more at length, infra, but which does specifically provide for the payment of the surplus to the treasurer in the event that no owner or owners, agent or agents can be found. The time in which such payment is to be made under these special and particular circumstances will be discussed in connection with that statute.

The person entitled to the surplus is the owner of the property against whom it has been sold for the delinquent taxes, subject, of course, to outstanding mortgages, judgment liens, etc. In view of the innumerable conflicts which might arise regarding the determination of the person entitled to the surplus, protection has been granted the collector by the provisions of Section 11132, which permit him, in the event of a doubt or a dispute arising, to pay the money into the county treasury, leaving the claimants to recourse to the courts for an adjudication of their rights with respect thereto.

We believe that the plain terms of the statute permit the collector, upon his own initiative, to pay the surplus to the treasurer in the event a doubt exists in the mind of the collector as to the proper person entitled to receive such

surplus. In those circumstances, we do not believe it necessary for the collector to obtain an order from the county court.

Section 11145, R. S. Mo., 1939

Section 11145, R. S. Mo., 1939, reads as follows:

> "The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: By paying to the county collector, for the use of the purchaser, his heirs or assigns, the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, not to exceed ten per centum annually, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption. Upon deposit with the county collector of the amount necessary to redeem as herein provided, it shall be the duty of the county collector to mail to the purchaser, his heirs or assigns, at the last postoffice address if known, and if not known, then to the address of the purchaser as shown in the record of the certificate of purchase, notice of such deposit for redemption. Such notice, given as herein provided, shall stop payment to the purchaser, his heirs or assigns, of any further interest or penalty. In case the party purchasing said land, his heirs or assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years next following the date of sale, no interest shall be charged or collected from the redemptioner after that time."

We think the first question you have proposed with respect to this statute is answered by this portion thereof:

> "By paying to the county collector, * * the full sum of the purchase money named in his certificate of purchase and all the costs of the sale together with interest at the rate specified in such certificate, * * * with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum per annum on such taxes subsequently paid, and in addition thereto the person redeeming any land shall pay the costs incident to entry of recital of such redemption."

We believe that the second question you have proposed respecting this statute is answered by the provision therein which reads as follows:

> "By paying to the county collector, for the use of the purchaser, his heirs or assigns, * * *."

This discloses that all excess payments made by the person redeeming the property are to go to the original purchaser at the tax sale. There will be no duplication of surplus funds in the hands of the collector, inasmuch as the original surplus arising at the sale is required by the provisions of Section 11132, R. S. Mo., 1939, quoted supra, to be paid to the "person entitled thereto." Upon redemption, the surplus is repaid to the purchaser, his heirs or assigns, to reimburse him for the amount which he had paid at such original sale.

## Section 11159, R. S. Mo., 1939

Section 11159, R. S. Mo., 1939, reads as follows:

> "When real estate has been sold for taxes or other debt by the sheriff or collector of any county within the state of Missouri, and

> the same sells for a greater amount than the debt or taxes and all costs in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff or collector of the county, when such sale has been or may hereafter be made, to make a written statement describing each parcel or tract of land sold by him for a greater amount than the debt or taxes and all costs in the case, and for which no owner or owners, agent or agents can be found, together with the amount of surplus money in each case, which statement shall be subscribed and sworn to by the sheriff or collector making the same before some officer competent to administer oaths within this state, and then presented to the county court of the county where such sale has been or may hereafter be made; and on the approval of the statement by the court, the sheriff or collector making the same shall pay the said surplus money into the county treasury, take the receipt in duplicate of said treasurer for said overplus of money and retain one of the said duplicate receipts himself and file the other with the county court, and thereupon the court shall charge said treasurer with said amount. And said treasurer shall place such moneys to the credit of the school fund of the county, to be held in trust for the term of twenty years for the owner or owners or their legal representatives. And at the end of twenty years, if such fund shall not be called for, then it shall become a permanent school fund of the county. County courts shall compel owners or agents to make satisfactory proof of their claims before receiving their money: Provided, that no county shall pay interest to the claimant of any such fund."

We believe that your first question respecting this statute is answered by the discussion under Section 11132, supra. Here, again, the collector is charged with doing certain acts with respect to determining to whom the surplus should be paid, and under the general rule relating to the time when such acts

must be done, we believe that he would have a reasonable time within which to determine that the owner or owners, his or their agent or agents cannot be found. You will note that Section 11159 is a special statute dealing only with the situation when the owner or owners, his or their agent or agents cannot be found.

With respect to your second question, we believe that if the conditions enumerated therein are such as to create a doubt in the mind of the collector as to whom the surplus should be paid, he should proceed under the provisions of Section 11132, which permit him, in such cases, to deposit the money with the treasurer.

## CONCLUSION

In the premises, we are of the opinion:

(1) That under the provisions of Section 11132, R. S. Mo., 1939, the collector has a reasonable time after the sale of lands for delinquent taxes to turn the surplus arising therefrom into the county treasury;

(2) That the person entitled to such surplus is the owner of such real property so sold, subject to the rights of the owners of existing mortgages or judgment liens, and that such surplus should be paid to the person entitled thereto within a reasonable time;

(3) That if a doubt exists in the mind of the collector as to whom such surplus should be paid, he is authorized under the provisions of Section 11132, R. S. Mo., 1939, to pay such surplus into the county treasury without the order of any court;

(4) That the person redeeming real property from sale for delinquent taxes must pay to the collector the full sum of the purchase money named in his certificate of purchase and all the costs of the sale, together with interest at the rate specified in such certificate, with all subsequent taxes which have been paid thereon by the purchaser, his heirs or assigns, with interest at the rate of eight per centum per annum on such taxes subsequently paid, and an amount sufficient to pay the costs incident to entry of recital of such redemption;

(5) That the surplus then in the hands of the collec-

tor arising by virtue of such redemption shall be paid by the collector to the purchaser at the original sale, or his heirs or assigns;

(6) That the collector has a reasonable time under the provisions of Section 11159, R. S. Mo., 1939, within which to ascertain whether or not the owner or owners, his or their agent or agents may be found, and that it is only after failing to find such owner or owners, his or their agent or agents, that the collector is required to file the statement described in Section 11159; and

(7) That if a doubt exists in the mind of the collector as to whom he should pay the surplus, he should pay such surplus into the county treasury in order that claimants thereof may establish their rights thereto in a court having jurisdiction to adjudicate such claims.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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