

TAXATION: Deed under Jones-Munger law conveys fee simple title, subject only to certain taxes.

October 21, 1944



Mr. H. H. Harris, Jr.,
City Attorney
Marshall, Missouri

Dear Sir:

We have your letter of the 14th in which you submit the following for our opinion:

"Our City Collector has advertised for sale a piece of property here in town to be sold for delinquent taxes under the Jones-Munger law in November.

"There is a life estate in the property with remainder in fee over to several parties, some of whom are living at unknown addresses. The collector has been asked several times as to whether or not the purchaser at the sale gets a certificate which in two years will entitle him to a deed for the life estate or to the fee. He asked me about the matter and I do not seem to find the answer under the new law. Under the old law (134 S.W. 2nd 62, and other cases) if the life tenant and the remaindermen were made defendants in the suit then a fee was given. But under the new law notice is given just as to the description of the tract of land, sale is had, certificate issued and thereafter a deed by the collector; and then comes the

suit to quiet title under section 11169. Nothing is mentioned in that section as to a fee simple title and the section 11150, states that the conveyance shall be 'prima facie evidence of a good and valid title in fee simple in the grantee,' but the conveyance itself reads to me like a quit-claim deed. And I find no cases on this point."

We believe Section 11149, R. S. Mo. 1939, answers your question. That section provides in part as follows:

"If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyor, 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, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold. * * * * *

Section 11150, R. S. Mo. 1939, provides that such deed by the collector shall be prima facie evidence of a good and valid title in fee simple in the grantee of said deed. Our Supreme Court in the case of Johnson v. McAboy, 169 S. W. (2d) 932, 934, held that a purchaser at such a tax sale could make out a prima facie case in court by the production of a

tax deed from the collector. The form of deed set out in Section 11150, supra, is a form similar to that used in a warranty deed. However, there would be no way to enforce a warranty against the collector, so that the deed, in effect, is a quit claim deed. Nevertheless, a fee simple title is conveyed as is often done by a quit claim deed. Section 11149, supra, provides that the deed shall convey a fee simple title, and the form of the deed set out in Section 11150 is sufficient to convey such title.

It is true that under the old law where the lien for taxes was enforced by a suit in court, followed by an execution sale, the judgment establishing the lien was good only against those joined in the suit. This was done so that no one would be deprived of his property without due process of law. However, under the present provisions for sale of lands for delinquent taxes, everyone having an interest in the lands has an opportunity to protect his interest. By Section 11145, R. S. Mo. 1939, any person having an interest in the land may redeem the same during the period of two years following the sale. Everyone is presumed to know that taxes are assessed against land, and therefore when provision is made allowing persons interested in real estate several years' time after the taxes become delinquent within which to pay them, such persons are given ample opportunity to protect their interest in the property.

Conclusion

It is, therefore, the opinion of this office that a sale of real estate under the so-called Jones-Munger law conveys a fee simple title in said land, subject to unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold.

Respectfully submitted,

APPROVED:

HARRY H. KAY
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