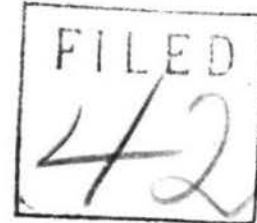


TAXATION: Certificate of purchase from county superior to certificate from city under Jones-Munger Act.

September 28, 1938

Honorable Oscar T. Honey,
Mayor, City of Chaffee,
Chaffee, Missouri



Dear Sir:

This is to acknowledge receipt of your request for an opinion from this department under date of September 23, 1938, which is as follows:

"It is requested that your office furnish the City of Chaffee an opinion based on the following situation:

"Under the Jones Munger Law, Scott County sold a certain piece of property (Real estate) within the corporate limits of the City of Chaffee for taxes, this tax sale was made on the third year advertising, the first year no bid, second year no bid, third year it went to the highest bidder and was sold. That refers to the years 1934, 1935, 1936.

"As the city of Chaffee had back taxes on the same property that were not paid, the property was advertised first year 1935, no bid, second year 1936 no bid, 1937 sold to the highest bidder but this bidder was not the same person that bid the property in at the county sale.

"It must be noted that the county sale was one year before the city sale.

"According to the interpretation of the law that we have, the two years that the property could be redeemed expires in November 1938, for the county, and November 1939 for the City.

"In case the property is not redeemed, who will the property belong to at the end of the two year period, the person that bid the property in at the County sale, or the person that bid in the property at the city sale?"

Section 6093, R. S. Mo. 1929, reads as follows:

"All cities and towns in this state containing five hundred and less than three thousand inhabitants, and all towns existing under any special law, and having less than five hundred inhabitants, which shall elect to be cities of the fourth class, shall be cities of the fourth class."

According to the 1930 census, the population of the City of Chaffee is shown as 25,902. Under the above section, the City of Chaffee should be considered a city of the fourth class.

Collection of delinquent taxes in cities of the fourth class is governed by Section 6995, R. S. Mo. 1929, which reads as follows:

"Upon the first day of January of each year all unpaid city taxes shall become delinquent, and the taxes upon real property are hereby made a lien thereon. The enforcement of all taxes authorized by this article shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of

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the payment of state and county taxes, including the seizure and sale of goods and chattels, both before and after said taxes shall become delinquent: Provided, that all suits for the collection of city taxes shall be brought in the name of the state, at the relation and to the use of the city collector.

It will be noticed that according to the above section, the enforcement of the collection of delinquent taxes shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection of the payment of state and county taxes.

In answering your request, we are assuming that both the third sale made by the county for the years 1934, 1935 and 1936, and the third sale made by the city for the years 1935, 1936, and 1937 were properly conducted and in the manner prescribed by law.

Section 9956a, Session Laws of 1933, page 437, 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 post-office 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."

Under this section, the purchaser at the third sale by the city could redeem the property from the purchaser at the third sale by the county. It was so held in the case of Little River Drainage Dist. v. Sheppard, 7 S. W. (2d) 1013, 1. c. 1014, where the court said:

"The lien for state and county tax shall be paramount. The statute does not say that it shall necessarily destroy the district lien for special taxes. The plaintiff district, according to the stipulation and the finding of the trial court, was not made a party to this proceeding. No person or corporation can be affected by a proceeding to which he or it is not made a party, and that applies to tax suits. For instance, the state's lien for taxes is superior to a prior mortgage lien, and a sale under such tax lien conveys title to the purchaser but does not affect the mortgagee's right to redeem. * * * *

"The purchaser at the tax sale holds such title subject to the right of the plaintiff

to redeem. If the district had been made a party to the proceeding with an opportunity to meet and pay the general taxes at the time, a different question would be presented for consideration."

Also, in the case of *Dyer v. Harper*, 77 S. W. (2d) 106, 1. c. 107, the court said:

"The lien created by the judgment for state, county, and school taxes was superior to the lien for drainage taxes. In the suit to enforce the collection of state, county, and school taxes, the Big Creek drainage district No. 2 was not made party, and therefore its lien was not destroyed by a sale under such a judgment. At a sale under a judgment for drainage taxes, the purchaser would acquire the right to redeem in an action against the holder of the tax title, by making a proper tender of the amount due the holder of the tax title. *Little River Drainage District v. Sheppard*, 320 Mo. 341, 7 S. W. (2d) 1013."

Under the holding in the two cases cited above, the holder of the certificate of purchase given by the city would be entitled to redeem as to his interest in the property in accordance with Section 9956a, supra, and also according to the decisions in the above cited cases, the certificate of purchase on a sale for delinquent state and county taxes is paramount to any other inferior lien, and so applies to a lien created or certificate of purchase issued by a city for city taxes.

Section 9957, Session Laws of 1933, page 438, reads 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. In making such conveyance, when two or more parcels, tracts, or lots of land are sold for the non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall in anywise become the owner of the certificates thereof, all of such parcels shall be included in one deed."

CONCLUSION

In view of the foregoing, it is the opinion of this department that the person who bid the property in at the third county sale received a certificate of purchase which is paramount and superior to the certificate of purchase issued at the third city sale. It is further the opinion of this department that if the property is not redeemed within two years from the time of the purchase, at which time the certificate of purchase was issued, then the holder of the certificate of purchase issued at the county sale has a good and sufficient title in fee simple

Honorable Oscar T. Honey

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in accordance with Section 9957, supra, but under the foregoing authorities the holder of the certificate of purchase issued by the city at the third sale has sufficient interest in the property so that he may, by complying with Section 9956a, supra, make his certificate of purchase superior to the certificate of purchase issued by the county at the third sale on the same property.

Respectfully submitted,

W. J. BURKE,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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