TAXATION:

SALES FOR DELINQUENT TAXES: Surplus from general tax sale of lands after payment of delinquent taxes, interest, penalty and costs should be paid to owner of lands at time of tax sale and not to grantee of deed from such owner subsequent to such tax sale where deed purports to convey grantor's interest in said lands and no reference is made to right to surplus.

April 19, 1950

FILED
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4/20/50

Honorable David E. Impey
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Sir:

This is to acknowledge receipt of your recent letter requesting a legal opinion of this department. Said request reads as follows:

> "The County Court of this county is faced with several cases involving the right to overplus from tax sales under the Jones-Munger act. I therefore request your opinion upon the following question:
>
> "Is the grantee in a deed, made by one who was record owner of the lands purported to be conveyed by that deed at the time of the prior sale for taxes under the Jones-Munger act, entitled to the overplus arising from such prior tax sale?
>
> "Are the rights to such overplus affected by
>
> (a) whether such subsequent deed is a quit-claim deed or a general warranty deed? and,
>
> (b) whether such deed is made before or after the period within which redemption from such tax sale might be had?"

Section 11132, Laws of 1945, page 1850, reads in part 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 the case of Holly vs. Rolwing, 230 Mo. App. 33, the right to a surplus arising from a general tax sale under a statute which has since been repealed, (but similar in effect to Section 11132, supra) was involved. The court held that the surplus arising from such sale belonged to the owner at the time of the sale and not to a levee district which claimed it was entitled to the fund as the holder of a junior lien on the lands at the time of the tax sale. The opinion of the court indicated that the surplus partook of the nature of personal property and not realty as contended by the levee district, and that the district had no lien on the surplus to the extent of the amount owed to it by the owner of the lands. In discussing this matter, the court said in l.c. 42:

"As we read the statute with reference to collection of delinquent levee taxes we find no provision that would authorize such an action as herein brought that would establish a lien upon the surplus money left after a sale by the State for the collection of general taxes. Nor do we find any authority by the courts of this State that would authorize our so holding.

"* * * there is no provision in the statute giving the drainage or levee districts the right to follow the surplus derived from a sale under a procedure to collect general taxes, * * *"

In view of the provisions of Section 11132, supra, and the ruling announced in the above cited case, the answer to your first inquiry will be that the owner of the lands at the time of the delinquent tax sale is entitled to the surplus arising from such sale, rather than a grantee in a deed from such owner where the deed was made subsequently to the tax sale.

You make the further inquiry: "Are the rights to such overplus affected by (a) whether such subsequent deed is a quitclaim deed or a general warranty deed, and (b) whether such deed is made before or after the period within which redemption from such tax sale might be had?"

In the Rolwing case, supra, it was indicated that the right to a tax surplus was personal property, and did not partake of the nature of realty, and that such right to the tax surplus was in the owner of the land at the time of the tax sale. In view of the

ruling in this case, the right to the tax surplus being personalty, neither a quitclaim deed nor a warranty deed would operate as an assignment of the surplus funds arising from the sale of real estate for taxes. The right of the owner of the land at the time of the sale to the surplus would not be affected by any subsequent conveyance.

Your last inquiry found in subsection (c) is stated: "Are the rights to such overplus affected by whether such deed is made before or after the period within which redemption from such tax sale might be had?"

Section 11130, Mo. R.S.A. 1939, provides in part as follows:

> "Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell same to the highest bidder, and there shall be no period of redemption from such sales. No certificate of purchase shall issue as to such sales but the purchaser at such sales shall be entitled to the immediate issuance and delivery of a collector's deed.* * *"

It appears that the effect of this section is that the sum bid for lands sold for taxes at the first or second offering shall be the amount of the delinquent taxes, interest, penalty and costs provided by law. Since no provision is made for a surplus over the actual amount due, it appears to be the intention of the framers of this section of the Jones-Munger Act that there should be no surplus. Properly a surplus can arise only at the sale of land which has been advertised for three times, commonly referred to as a "third time sale" where there is no period of redemption. Such was the situation in the Rolwing case, 230 Mo. App. 33, heretofore cited as holding that the surplus was personal property.

Your letter indicates, and it is learned, that in some counties land advertised for the first or second time has been sold to the highest bidder, thus creating a surplus in excess of the amount necessary to pay taxes, interest and costs. While such a sale is not contemplated or authorized by the statute, the surplus arising from such a sale certainly would be personal property of the owner of the real estate at the time of sale and not affected by any subsequent conveyance of the real estate.

It is assumed and your inquiry indicates that the deed is in usual form and purports to convey only real estate and does not purport to assign the surplus arising from the sale.

Conclusion

It is, therefore, the opinion of this department that the owner of the land at the time of sale and not his grantee in a deed purporting to convey the land at a time subsequent to the sale of such land for delinquent taxes, interest, penalty and costs is entitled to the surplus arising from such sale, such surplus being personal property and not constituting any right, title or interest in the land described in the deed.

Respectfully submitted,

PAUL N. CHITWOOD,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

PNC:nm