

TAXATION: Tax deeds to trustee must be executed only on tract or tracts of land described in each publication.

January 14, 1942

Mr. Frank W. Jenny  
Prosecuting Attorney  
Franklin County  
Union, Missouri



Dear Mr. Jenny:

I desire to acknowledge your request for an opinion, dated January 8, 1942, relating to the Jones-Munger law, and also your explanatory letter of January 10, 1942, relating to the same subject which is as follows:

"In reply to your letter of January 9th, kindly be advised that we are interested in the making of the conveyance by the Collector to the Trustee and it is those deeds that I was particularly interested in.

"The situation which has arisen is: Some years since the Assessor placed upon the books a great many assessments of mineral rights which were held by persons other than the owner of the fee. The facts are that many of these mineral rights have no actual value and taxes thereon have never been paid.

"From time to time they have been advertised for sale with no bidders and the Court has appointed a Trustee to purchase them on behalf of the County. There are many of these tracts and the county will probably never recover the amount of costs and expenses already accrued.

"Now if in each instance a separate deed is made by the Collector with a fee of \$1.50 and recorded by the Recorder for a fee of \$1.75,

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it will cost the county a very substantial additional sum of money with comparatively little prospect of a recovery and if all of the property purchased by the Trustee can be placed in one conveyance it will result in a very material saving to the county at a time when economy is almost a necessity."

Section 11150 Revised Statutes of Missouri, 1939, sets out the form of deed to be executed and delivered by the collector in the sale of real estate for delinquent taxes thereon.

Section 11151 thereof, providing for variations from the above form is as follows:

"In case circumstances should exist requiring any variation from the foregoing form, in the recital part thereof, the necessary change shall be made by the county collector executing such deed, and the same shall not be vitiated by any such change, provided the substance be retained. The county collector shall be entitled to demand and receive from the person applying therefor, for each tax deed, one dollar and fifty cents, which shall include the acknowledgment."

Section 11149 thereof (Laws 1933, p. 425, Sec. 9957), is in part as follows:

"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."

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Section 11131 thereof, (Laws of Missouri, 1939, page 850, Section 9953-b) was passed in order that a county might bid "to protect taxes and prevent loss", and is as follows:

"It shall be lawful for the County Court of any County, and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis, to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which Section 11130 is applicable, and to purchase at such sales all lands or lots necessary to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids. Such person or persons so designated are hereby declared as to such purchases and as title holders pursuant to collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold. Such person or persons so designated shall not be required to pay the amount bid on any such purchase but the collector's deed issuing on such purchase shall recite the delinquent taxes for which said lands or lots were sold, the amount due each respective taxing authority involved, and that the grantee in such deed or deeds holds title as trustee for the use and benefit of the fund or funds entitled to the payment of the taxes for which said lands or lots were sold. The costs of all collectors' deeds, the recording of same and the advertisement of such lands or lots, shall be paid out of the county treasury in the respective counties and such fund as may be designated therefor by the authorities of the City of St. Louis. All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustees upon order of the County Court of the respective counties

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and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis, and the proceeds of such sales shall be applied, first, to the payment of the costs incurred and advanced, and the balance shall be distributed pro rata to the funds entitled to receive the taxes on the lands or lots so disposed of. Upon appointment of any such person or persons to act as trustee as herein designated a certified copy of the order making such appointment shall be delivered to the Collector, and if such authority be revoked a certified copy of the revoking order shall also be delivered to the Collector. Compensation to trustees as herein designated shall be payable solely from proceeds derived from the sale of lands purchased by them as such trustees and shall be fixed by the authorities hereinbefore designated, but not in excess of ten percent (10%) of the price for which any such lands and lots are sold by the trustees: Provided further, that if at any such sale any person bid a sufficient amount to pay in full all delinquent taxes, penalties, interest and costs, then the trustees herein designated shall be without authority to further bid on any such land or lots." (Underscoring ours).

In making such purpose effectual, the Legislature provided for the appointment of a trustee to bid at sales of lands or lots sold for delinquent taxes where no bids were made by other person or persons for the total sums due.

No form for deeds to trustees was prescribed by the Legislature. The prescribed deed, even with the variations of form permitted under Section 11151, supra, would be inadequate for conveyance to the trustee under the provisions of Section 11131, supra.

The prescribed deed conveying lands or lots under a third sale is the final action of the collector in foreclosure of the lien of the state for delinquent taxes. The conveyance to the trustee is the final action of the collector, but thereafter the supplementary scheme provided in Section 11131, supra, provides for the realization of such taxes by acts of the county court and its appointed trustee. The first conveyance must be by deed; the last by a conveyance in the nature of a trust, even though it is called a deed. It is a conveyance to the trustee and the trust is for the taxing authorities named in the instrument in the amount due each on the lands or lots so sold.

Thus each conveyance by the collector to the trustee is an individual trust for such taxing authorities and represents taxes due such authorities based upon an assessment on surface, and, in some instances, on granite, coal, oil, and other subsurface interests in realty, which must be separately assessed. Such taxing authorities may differ in different assessments. The commingling of such interests of such varied parties in and to such varied properties in one conveyance could not have been intended by the Legislature.

While, in Section 11149, supra, the Legislature provided that when "the same person or persons shall in any wise become the owner of the certificates thereof, all of such parcels shall be included in one deed" it had reference only to person or persons obtaining deeds and not conveyance in trust.

Therefore, the 1933 Legislature which passed the Jones-Munger law could not have anticipated the passage of Section 11131, supra--which is a radical departure from any scheme heretofore devised for the collection of taxes on real estate--and intended that the said section come within the purview of Section 11149, with respect to the inclusion in one deed of all parcels of land sold to the same person under certificates of sale.

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CONCLUSION

Therefore, it is the opinion of this Department that in making sales of lands for delinquent taxes on real estate to a trustee appointed under Section 11131, supra, the collector must execute and deliver an individual deed for individual tract or tracts of lands described in each publication for sale.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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