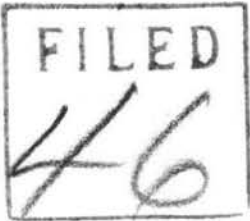


CIRCUIT CLERK: .  
COMPENSATION:  
TAXATION:  
CERTIFICATE OF PURCHASE AT  
LAND SALES--Rights of holder;  
rights of county.

Circuit Clerk in Class 4 Counties, with an assessed valuation of more than Five Million Dollars, entitled to \$700.00 annually as Parole Commissioner, effective April 12, 1952. Holder of certificate of purchase loses all rights in land and purchase price paid if County Collector does not execute and record deed to purchaser within 4 years after date of certificate under Sec. 140.410, RSMo 1949. County does not thereby become the owner of such lands.



October 16, 1953

Honorable Olin B. Johnson  
Prosecuting Attorney  
Schuyler County  
Lancaster, Missouri

Dear Mr. Johnson:

This is the opinion you requested from this office for the construction of statutes of Missouri referring to compensation of public officers named in your letter, and respecting the rights of individuals and counties involved in the sale of lands for delinquent taxes in this State. Your letter in this behalf reads as follows:

"Two problems have been brought to my attention by county officials in this county and I would like to have the opinion of your office thereon.

"1. Since the effective date of Section 483.367 Missouri Revised Statutes, Cum. Supp. 1951, the circuit clerk of this county has through an error received six hundred dollars annually as compensation under this section when his rate of compensation should have been seven hundred dollars inasmuch as this is a county of the fourth class with an assessed valuation in excess of five million dollars.

"Queries: (a) is this official entitled to a backpayment of all such compensation earned but not received?  
(b) was April 12, 1952, the effective date of such section?

"2. A person purchased certain real estate at the county collector's tax sale and received a purchase certificate therefor. The person

Honorable Olin B. Johnson:

fails to obtain a collectors deed for such property for more than four years after the date of such purchase certificate.

"Queries: (a) has the purchaser forfeited all interest in the real estate and the amount of his purchase price?

(b) if so, would the county now be the owners of this land?"

You recite in your request for an opinion, with respect to these matters, that the Circuit Clerk of your county, a county of the Fourth Class under our statutes with an assessed valuation in excess of Five Million Dollars, through error has received \$600.00 as compensation under Section 483.367, Laws of Missouri, 1951, pages 459, 460; Laws of Missouri, 1951, pages 435, 436; Cumulative Supplement, Laws of Missouri, 1951, page 408, for duties imposed upon the Circuit Clerk as Parole Commissioner, whereas, under the terms of said Section 483.367, supra, he should have received the sum of \$700.00.

You submit two questions for our consideration under the terms of said Section 483.367 which are:

(a) Is this Official entitled to a back payment of all such compensation earned but not received?

(b) Was April 12, 1952, the effective date of such section?

In answer to your question (a) we are enclosing copy of an opinion issued by this office on March 10, 1936, for Honorable Charles A. Hardin, Judge of the Probate Court of Jefferson County, Hillsboro, Missouri, in which opinion it is held on pages 8 and 9, citing authorities, that public officers may collect back salary earned but not received, subject to the five year Statute of Limitations in this State.

Your question (b) in paragraph 1 of your letter asks our construction of the statutes and Constitution of this State to determine if April 12, 1952, was the effective date of said Section 483.367. It will be observed by referring to the citation of Laws of Missouri, 1951, pages 435, 436,

Honorable Olin B. Johnson:

that the Act, (S.B. No. 280), fixing the compensation of Clerks of Circuit Courts in Fourth Class counties in this State where the assessed valuation is more than Five Million Dollars, as Parole Commissioner, in Section 2 thereof, provides an emergency clause or section included in the body of said Act.

It is indicated, as a footnote, at the end of Section 483.367, Laws of Missouri, 1951, Cumulative Supplement, page 408, that the Bill creating such additional duties for the Circuit Clerk and fixing his compensation in counties of the Fourth Class having an assessed valuation of more than Five Million Dollars, was: "sent governor 4-2-52. Approved 4-12-52. Emergency clause."

Section 29, Article III of the Constitution of this State, 1945, provides that no law passed by the General Assembly shall take effect until ninety days after the adjournment of the session in which it was enacted, except in case of an emergency which must be expressed in the preamble or in the body of the Act. In this case, as recited, there was, and is, an emergency clause or section contained in the Bill itself.

Section 31, Article III of the present Constitution of this State provides, among other things, that all Bills and Joint Resolutions passed by both Houses shall be presented to and considered by the Governor. This section continues and states: "If the bill be approved by the governor it shall become a law."

If, as we may safely assume was the case, the Act creating the additional duties to be performed by a Circuit Clerk as Parole Commissioner, and so fixing his salary as stated in said Section 483.367 in counties of the Fourth Class at \$700.00, was approved by the Governor on the twelfth day of April, 1952, as stated in said footnote, then, and in that event, under the constitutional provision herein recited, April 12, 1952 became and was the effective date of said Section 483.367. The copy of said opinion dated March 10, 1936, holding that public officers may collect back pay due them, and our recital of the provisions of the Constitution, respecting the effective dates of Bills passed by the Legislature with an emergency clause and approved by the Governor, will answer your questions (a) and (b) in paragraph 1 of your letter.

In paragraph 2 of your letter you submit the proposition that an individual purchased certain real estate at

Honorable Olin B. Johnson:

the County Collector's tax sale and received a purchase certificate therefor; that said person failed to require the delivery of a deed from the County Collector to such property for more than four years after the date of such purchase certificate. In this condition of facts you submit two queries: (a) Has the purchaser forfeited all interest in the real estate and the amount of his purchase price?

In reply to question (a) in said paragraph 2, we are enclosing a copy of the opinion of this office dated March 8, 1940, prepared for Mr. W. A. Holloway, Chief Clerk, Auditor's Office, Jefferson City, construing the original Jones-Munger Law, passed by the Legislature of this State, Laws of Missouri, 1933, page 425, holding that under Section 9954c, Laws of Missouri, 1933, pages 435, 436 (now Section 140.410, RSMo 1949), in the last paragraph of said opinion, quoting said Section 9954c, appearing on pages 4 and 5 of said opinion, and in the conclusion of said opinion, that if a person became a purchaser at such delinquent land tax sale of real estate sold and a certificate has been issued to such person, and such purchaser or his representatives does not comply with the statutory duty imposed upon him or them by said section, by causing a deed to be executed to him and placed on record in the proper county, within four years from the date of said sale, as indicated by such certificate of purchase, such purchaser and holder of the certificate of purchase loses the benefits of the lien on the lands described in the certificate and thereby loses all rights thereunder, leaving the lands in statu quo as to the tax lien for the particular years involved, and that a Collector may not, after such four-year period has expired, after the date of the certificate of purchase, execute and record a deed to such holder of a certificate of purchase or his assignee.

Your question (b) in paragraph 2 of your letter submits the query that, if the purchaser has, by failure to comply with the terms of said Section 140.410, forfeited his interest in the real estate and the amount of his purchase price, would the county now be the owner of this land?

You do not say in your letter if the sale of real estate for delinquent taxes in your county in this case arose from a first sale or a second sale. We assume, however, that since your letter was silent on that matter, the sale was a first sale by the County Collector as a first offering of such real estate for sale, according to the provisions of Section 140.190, RSMo 1949. As will be observed in said

Honorable Olin B. Johnson:

opinion, and the conclusion thereto, of March 8, 1940, it is held that where the certificate holder at any such sale does not require a deed within the four years prescribed by the statute after the date of his certificate of purchase to be executed and recorded, the holder of said certificate loses all rights thereunder, leaving the lands in statu quo as to the tax liens for the particular years involved. This, we understand the opinion to mean, and to be based upon the fact that there would be, in such instance, no sale of the real estate against which there were delinquent taxes and that in such event the titleholder of such land would still be the owner thereof and that such real estate would be subject to a second or third offering, as the case might be, for sale under the lien, and that clearly the county would not, and could not, automatically become the owner of such real estate because of the default and loss of rights by the certificate holder by reason of not complying with the provisions of said Section 140.410.

A county may acquire the title and ownership of lands against which taxes are delinquent and which land is sold to recover and collect such delinquent tax by complying with the terms of the statutes. Subsection 1 of Section 140.260, RSMo 1949, permitting the County Court to become a bidder through its agent, or agents, and to purchase real estate so sold, reads 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 140.250 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."

Attention is directed in said Subsection 1 of said Section 140.260, to sales for which provision is made in Section 140.250 of the same chapter. We do not deem it necessary to quote here said Section 140.250 in full, because of its length. The section, however, provides that, if lands shall have been offered for sale for delinquent

Honorable Olin B. Johnson:

taxes, interest, penalty and costs by the Collector of the proper county for any two successive years and no person shall have paid therefor a sum equal to such total accumulation of such debts, then the County Collector shall, at the next regular tax sale (the third offering for sale), sell the same to the highest bidder and there shall be no period of redemption for such sale. This section further provides that no certificate of purchase shall issue after such sale, but that the purchaser shall be entitled to the immediate issuance and delivery of the Collector's deed, unless the purchaser at such sale shall be the owner of lands or lots purchased, in which event no deed shall issue, but he must pay the taxes, the delinquency of which causes such lands or lots to be sold, and the interest and penalties in addition, and in such event no deed shall issue to such purchaser or to anyone acting for him.

It appears plain, we believe, that only under these circumstances may a county bid in lands at a third offering of sale thereof for delinquent taxes and become the owner of the title to such lands. The copy of said opinion dated March 8, 1940, holding that if the certificate holder at a sale of real estate for delinquent taxes does not require a deed from the Collector within four years after the date of his certificate, such purchaser loses all rights under such certificate and the amount of his purchase price, leaving the lands in statu quo as to the tax liens for the particular years involved. The terms of Section 140.260, providing the only procedure whereby a county may become the owner of the title to lands and lots so sold for delinquent taxes, and our observations that the county does not, and could not, become the owner of lands or lots merely because of the default and loss of rights by the certificate holder by reason of his not complying with provisions of said Section 140.410, RSMo 1949, answer, respectively, each of your questions (a) and (b) in paragraph 2 of your letter.

#### CONCLUSION

It is, therefore, the opinion of this office, considering the premises, that:

1) Public officers are entitled to back payment of compensation earned but not received;

Honorable Olin B. Johnson:

2) That April 12, 1952, was, and is, the effective date of Section 483.367, Laws of Missouri, 1951, Cumulative Supplement, page 408, fixing the compensation of Clerks of Circuit Courts at \$700.00 for additional duties performed as Parole Commissioner in Class Four Counties of this State where the assessed valuation is more than Five Million Dollars;

3) That where the purchaser or a certificate holder at a sale of lands for delinquent taxes does not require a deed to be executed and recorded by the Collector of the proper county within four years after the date of his certificate of purchase, the holder of such certificate loses all rights thereunder, including his purchase price, leaving the lands in statu quo as to the tax liens for the particular years involved;

4) That under such conditions the county does not become the owner of such lands or lots because of the default and loss of rights by the certificate holder, by reason of his not complying with the provisions of said Section 140.410, and that there was no sale of such lands or lots accomplished, the original owner still being the owner of such lands or lots, and that the county may only become the purchaser and owner of lands or lots so sold for delinquent taxes under and by complying with the provisions of Section 140.260, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON  
Attorney General

GWC;irk  
Enc: