

TAXATION:

DELINQUENT SALES:

Holder of second certificate of purchase of delinquent lands sold for taxes must immediately pay amount provided by statute in order to retain his rights of priority over the holder of the first certificate of purchase, and failure to do so forfeits such rights to the holder of the first certificate.

October 18, 1938

Honorable Thomas A. Mathews  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

11-10



Dear Sir:

This is in reply to yours of recent date wherein you submit a question based upon the following statement of facts:

"On November 4, 1935, one Johnson, under the tax law of Missouri 1933, became the holder of a certificate of purchase of certain real estate offered for sale for delinquent taxes. Under Section 9957, 1933 laws, page 438, says the holder of the original certificate of purchase is not entitled to a collector's deed until two years from the date of the certificate of purchase, and therefore, in this instance Johnson could not have secured a collector's deed until November 4, 1937.

"November 1, 1937, this same land was offered for sale for delinquent taxes for the years 1936 and 1937, and the same was bid in by one Jones, who was issued a subsequent certificate of purchase by the collector. On November 4, 1937, Johnson tendered to the collector the full amount of the taxes, costs, etc. in connection with the November 1, 1937 sale, and demanded a deed from the collector.

October 18, 1938

"Missouri Law of 1933, Section 9957C, says any purchaser that shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to be issued on the same property included in the certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser.

"According to this law, undoubtedly Johnson forfeited his rights of priority.

"However, this law requires that such subsequent purchaser (Jones) shall at the time of obtaining his certificate redeem said first certificate of purchase outstanding by depositing with the County Collector the amount of said first certificate with interest thereon to the date of said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of purchase, etc., etc.

"A subsequent certificate was issued by the collector to Jones, but Jones failed at that time to deposit with the collector the amount of the first certificate with interest. Shortly afterwards, the first certificate holder, Johnson, discovered this fact and tendered to the collector of taxes and costs of every kind and still demanded his deed, which was refused by the collector. Jones was notified of such offer of payment by the first certificate holder, Johnson, and afterwards did deposit with the collector the amount of the first certificate over the objection of the first certificate holder. Afterwards Jones, the second certificate holder, needing cash, withdrew his deposit from the collector, and there is no deposit there now. The first certificate holder still offers to pay the collector all taxes and costs, and demands a deed from the collector by reason of his first certificate

October 18, 1938

of purchase and says he is entitled to his deed for the reason that Jones, the subsequent purchaser, did not comply with the law by depositing with the County Collector when he should have done so, the amount of the first certificate with interest, and that there is no deposit with the collector at this time."

From a reading of the Jones-Munger Act pertaining to sales of delinquent lands for taxes, it seems that the lawmakers intended that the purchaser at such sales should pay the amount of his bid immediately.

Section 9953c, Laws of Missouri, 1933, page 433, provides 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; \* \* \*."

Section 9953d of said Act provides as follows:

"After payment shall have been made the county collector shall give the purchaser a certificate in writing, to be designated as a certificate of purchase, which shall carry a numerical number and which shall describe the land so purchased, each tract or lot separately stated, the total amount of the tax, with penalty, interest and costs, and the year or years of delinquency for which said lands or lots were sold, separately stated, and the aggregate of all such taxes, penalty, interest and costs, and the sum bid on each tract. \* \* \* ."

Section 9954 of said Act, page 434, provides as follows:

"It is hereby made the duty of the county collector, at the time he sells

October 18, 1938

lands for taxes unpaid and delinquent, as is directed in this act, and after the purchasers of land under such sales have made payment of the amount of their bids, respectively, to indorse upon and annex to each certificate to be given to the purchaser by the county collector, as required by this act, his written guaranty, signed by him, warranting that the taxes due upon the tract, lot or lots, piece or parcel of land, which, or a portion of which, are named in such certificate. \* \* \*

In the case of Maxwell v. Dunham, 297 S. W. 1. c. 97, the court in discussing when a sale is completed, said:

"The law is well settled in this state that, when a sale is made for cash, the transaction is not complete until the purchase price is paid, and until then no title passes to the purchaser unless the seller waives payment."

Under the foregoing provisions of the law relating to delinquent sales, the collector is under no circumstances authorized to waive payment in cash at the time the sale is made.

Vol. 61 C. J., page 1211, Sec. 1635, states the rule as follows:

"A tax sale must be made on the basis of a payment in cash."

And in the same volume, Sec. 1636, the rule is further stated:

"To acquire title under a tax sale the purchaser must pay the amount of his bid, to the officer authorized to receive it, within the time limited by statute for that purpose."

October 18, 1938

From the foregoing authorities and sections, it is evident that the purchase price of lands sold for taxes must be paid immediately, and if it is not so paid there is no sale.

In the case of Carter v. Munzesheimer, 272 S. W. 279, the court said:

"The purchaser's title did not become perfect until and unless his bid was accepted and the payment made, although there was a valid judgment, execution, and sale; and the burden of proving this fact was upon the purchaser. Manifestly, the title claimed by the purchaser was not legally effective if there was failure of compliance with the bid, for the law is well settled that the bidder acquires no title to the property purchased before and until the moment of payment of the purchase price bid."

Your letter also indicates that the highest bidder for the delinquent land sold for taxes for the years 1936 and 1937 paid the amount of his bid and a certificate was issued to him by the collector as required by law. It further appears that at that time the purchaser at the second sale did not deposit with the collector the amount of the certificate, with interest, owned by the first purchaser.

Section 9957c, Laws of Missouri, 1933, page 440, provides as follows:

"Every holder of a certificate of purchase shall before being entitled to apply for deed to any tract or lot of land described therein pay all taxes that have accrued thereon since the issuance of said certificate, or any prior taxes that may remain due and unpaid on said property, and the lien for which was not foreclosed by sale under which

October 18, 1938

such holder makes demand for deed, and any purchaser that shall suffer a subsequent tax to become delinquent and a subsequent certificate of purchase to issue on the same property included in his certificate, such first purchaser shall forfeit his rights of priority thereunder to the subsequent purchaser, and such subsequent purchaser shall at the time of obtaining his certificate redeem said first certificate of purchase outstanding by depositing with the county collector the amount of said first certificate with interest thereon to the date of said redemption and the amount so paid in redemption shall become a part of said subsequent certificate of purchase and draw interest at the rate specified in said first certificate but not to exceed ten percent per annum from the date of payment. Said holder of a certificate of purchase permitting a subsequent certificate to issue on the same property, shall, on notice from the county collector, surrender said certificate of purchase on payment to him of the redemption money paid by the subsequent purchaser."

Under the provisions of this section, the party who owned a certificate of purchase for delinquent lands sold at a prior tax sale forfeited his rights of priority by permitting such lands to be sold at a subsequent sale. The second purchaser of the lands acquired prior rights to such lands provided he deposited with the county collector the amount of said first certificate with interest thereon to the date of such second sale or the date when such certificate is redeemed.

It also appears from your request that the second purchaser made this deposit but later withdrew it. Said Section 9957c is a tax statute and one in which a forfeiture operates against the person holding the first certificate of title and the provisions of said section should be strictly

Oct. 18, 1938

construed. While we do not find where the second purchaser had authority to withdraw his deposit made for the redemption of the first certificate, yet since he has done that, he has failed to comply with the provisions of said Section 9957c, supra, and therefore cannot acquire the rights of priority given by said section.

Vol. 55 C. J., page 513, Section 506, states the rule which is applicable to your question, as follows:

"An intentional and deliberate failure to pay constitutes a material breach, which may give rise to a right to damages or rescission on the part of the seller."

In this particular case, applying the foregoing rule, the failure of the highest bidder at the second sale to deposit and leave deposited with the collector the amount of money necessary to take up the first certificate of purchase, with interest thereon, as provided by Section 9957c, supra, operated as a forfeiture of his rights and would authorize the collector to rescind the contract made at the second sale.

The purchaser at the second sale failed to meet the requirements of the statute by depositing the necessary amount of money and thereby lost his priority rights over the first certificate holder and lost his rights of having the second certificate issued to him. Then the holder of the first certificate of purchase may obtain a deed to the delinquent lands by virtue of the provisions of Section 9957, Laws of Missouri, 1933, page 438, which is 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

October 18, 1938

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

From the foregoing, we are of the opinion that the person making the highest bid for the delinquent lands which were offered for sale at the second sale, by failing to pay or by withdrawing the amount of money required by statute to be paid or deposited, loses his rights of priority over the holder of the first certificate of purchase of such lands. We are further of the opinion that the holder of the first certificate of purchase, upon making the payments required by the statute, at the end of two years from the date of the issuance of such certificate, is entitled to have a deed to the delinquent lands issued to him by the collector, provided that the holder or owner or any person interested in such lands has not redeemed them during said two-year period.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

TWB:HR