

TAXATION: senate Bill 94 does not apply to collection of levee and drainage district taxes.

September 8, 1934.



Hon. Maupin Mitchell
Collector of Revenue
Lincoln County
Troy, Missouri

Dear Mr. Mitchell:

Acknowledgment is made of your recent request for an opinion of this office on the following matter:

"We have several drainage tax sales pending. The owners are very much interested in learning whether or not they might be able to redeem their farms under the new redemption law, which applies to state and county taxes."

Sales to enforce the payment of delinquent drainage district taxes are held under the provisions of Sections 10765 and 10828 R. S. Mo. 1929, depending upon whether the drainage districts are organized by a proceeding in the Circuit Court or by a proceeding in the County Court as authorized by Articles I and II of Chapter 64 R. S. Mo. 1929. Portions of these Sections read as follows:

"Sec. 10765.* * * *The liens established and declared in the preceding sections may and shall be enforced by an action on delinquent tax bills* * *which action shall be instituted in the circuit court* * *within six months after December 31st of the year for which said taxes were levied* * *All sales of lands made under this section shall be by the sheriff, as is now provided under the general revenue law.
* * * *"

Sec. 10828.* * * *All drainage taxes provided for in this article,* * *constitute a lien,* * *and shall be collected, in the same manner as state, county and school taxes upon real estate are collected.* * * *All sales of lands made under

this section shall be by the sheriff, as is now provided under the general revenue law. All sheriffs' deeds executed and delivered, pursuant to this article, shall have the same probative force as deeds executed under judgments for delinquent general state taxes and in actions instituted under this article.* * *

By the foregoing provisions the necessary parts of this general law existing at the time of the enactment of these sections were adopted by reference and although its provisions as contained in Chapter 59 may have been repealed, that repeal does not act as a repeal of these provisions as found in the foregoing quoted sections. Endlich on The Interpretation of Statutes, Section 492:

"Where the provisions of a statute are incorporated, by reference, in another; (where one statute refers to another for the powers given or rules of procedure prescribed by the former, the statute or provision referred to or incorporated becomes a part of the referring or incorporating statute; and if) the earlier statute is afterwards repealed, the provisions so incorporated, (the powers given, or rules of procedure prescribed by the incorporated statute,) obviously continue in force, so far as they form part of the second enactment.* * *

This rule was adopted by the Supreme Court of this State in Gaston vs. Lancken, 115 Mo. 30.

We therefore see that the foregoing provisions have not been changed or modified by the enactment of Senate Bill 94 referring to the collection of delinquent state and county taxes by a summary proceeding. The manner of redemption of property under the new procedure for the collection of delinquent state and county taxes is provided in Section 9956a, page 437, Laws of Missouri 1933. This Section 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 costs of the sale together with interest of 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 postoffice 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."

The above section is absolutely inappropriate to any proceeding or sale held under the provisions of Sections 10765 and 10828. The means of effecting the redemption do not lend themselves to proceedings by suit, judgment and sale and could not be put in operation in respect to such proceedings.

It was the evident intent of the Legislature that the proceeding set up in Senate Bill 94 was not to be adopted to the foreclosure of delinquent drainage district taxes. We refer to Senate Bill 54 of the 57th General Assembly in Extra Session, found at page 154 Laws of Missouri, Extra Session, 1933-34. This Section established a limitation of five years upon proceedings for the sale of lands and lots under the provisions of Chapter 59 R. S. No. 1929 and closes with this proviso:

"Provided further, that in suits or actions to collect delinquent drainage and/or levee assessments on real estate such suits or actions shall be commenced within five years after delinquency, otherwise no suit or action therefor shall be commenced, had or maintained."

Hon. Maupin Mitchell.

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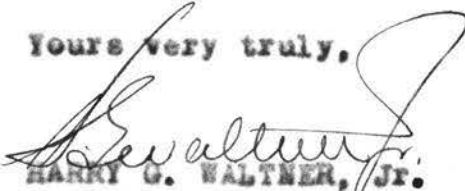
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This definitely establishes the legislative intent that delinquent drainage and levy district taxes should be continued to be collected by means of a suit brought in a Court of competent jurisdiction, and that such proceeding should not be effected or modified by Senate Bill 94.

The Attorney General in an opinion heretofore rendered to the Honorable Charles M. Hay, City Counselor of the City of St. Louis, dated September 4, 1934, has held that the foregoing Section 9961, page 154 Laws of Missouri, Extra Session, 1933-34 is in Pari Materia with Senate Bill 94.

It is therefore the opinion of this office that the provisions of Senate Bill 94 including the provisions for the redemption of land from sales held pursuant thereto are inapplicable to the collection of delinquent levee and drainage district taxes.

Yours very truly,


HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

C.F.H.
(Acting)
Attorney General

HCN:MM