

TAXATION; Right of Redemption from tax sale.

10-16

October 15, 1935.



Honorable J. K. Robbins  
Collector New Madrid County  
New Madrid, Missouri

Dear Mr. Robbins:

Acknowledgment is made of your request for an opinion of this office reading as follows:

"I have advertised for sale on Monday Nov. 4, 1935, under Senate Bill #94 of the 1933 Session Acts of Mo. a number of tracts of land with 5 years delinquent tax. Some of these tracts have also Drainage taxes, Levee taxes and mortgages under deed-of-trust for the same period.

I well understand that the purchaser at my sale will get a "tax certificate" and that the owner has the right, or equity of redemption for two years, but the situation is not clear to me about the following:

Will this sale for the Co. & State tax knock out these improvement taxes and the mortgage? If not--

In case the same land is sold for drainage or levee tax that is now due at some future date how will that affect the holder of the tax certificate or the one who has the superior equity of redemption?

Who has the superior rights of the equity of redemption, the senior improvement district, the mortgagee or the record owner of the land?"

October 15, 1935.

I.

Sometime ago this office rendered an opinion to the Honorable R. F. Baynes, Tax Attorney, New Madrid County, in which it is held:

"It is therefore the opinion of this office that a sale for state and county taxes under the Jones Munger Act does not in itself cut out the lien of drainage districts for drainage taxes."

This opinion is dated January 8, 1935, and I enclose a copy thereof for your information in respect to that holding. This opinion effectively answers your question "Will this sale for the county and state tax knock out these improvement taxes?"

II.

The statutes applicable to drainage districts provide for the levying of drainage taxes. Section 10828 R. S. Missouri 1929, in regard to county court drainage districts is an example and provides in part:

"All drainage taxes provided for in this article, including maintenance taxes, together with all penalties for default in payment of the same, all costs in collecting the same\* \* \* \* shall from date of the levying of the same by the county court\* \* \*until paid, constitute a lien, to which only the lien of the state for state, county, school and road taxes shall be paramount, upon all of the lands assessed\* \* \*."

So it appears that by the very provisions authorizing the levying of the tax it is provided that the lien for state and county taxes shall be superior. That being the case, a sale of land for drainage or levee taxes cannot effect this superior lien of the state and county but the purchaser at that sale takes the property subject to the lien for state and county taxes but with right to redeem the property from such sale as provided for in Section 9956a, page 437, Laws of Missouri 1933.

## III.

You last question is "Who has the superior rights of the equity of redemption, the senior improvement district, the mortgagee or the record owner of the land?" It is not exactly clear as to what is meant by the term "superior rights" in this question, but suffice to say it appears that under the law anyone of the three parties named would have the privilege of redeeming the property from the sale for state and county taxes. This conclusion is apparent because of Section 9958a, page 437, Laws of Missouri 1933, which provides in part:

"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 the costs of the sale together with interest at 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." \* \* \* "

These conclusions are supported by opinions of our Supreme Court in the cases of Little River Drainage District vs. Sheppard, 7 S. W. (2d) 1013, and Dyer et al. vs. Harper et al, 77 S. W. (2d) 106. In the former case the Court stated:

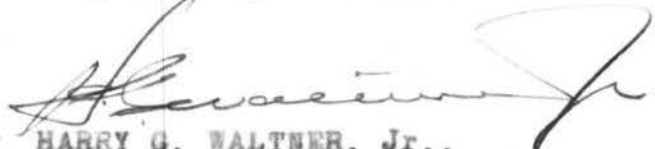
"the state's lien for taxes is superior to a prior mortgage lien, and a sale under such tax lien conveys title to the purchaser but does not affect the mortgagee's right to redeem. \* \* \*"

And in the latter case the Court stated:

"At a sale under a judgment for drainage taxes, the purchaser would acquire the right to redeem in an action against the holder of the tax title, by making a proper tender of the amount due the holder of the tax title."

Without question, in the event the improvement district or the mortgagee exercised their right of redemption, the record owner of the land could within the statutory time redeem from the improvement district or the mortgagee.

Respectfully submitted



HARRY G. WALTNER, Jr.,  
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APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney-General

HGW:MM  
Enclosure.