TAXATION: Distribution of surplus from general tax sale after payment of taxes, penalties, interest and costs.

January 6, 1944

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Honorable Eldred Seneker
Prosecuting Attorney
Mt. Vernon, Missouri

Dear Mr. Seneker:

This is an acknowledgment of your letter addressed to the General, requesting an opinion relating to the Jones-Munger Law, which is as follows:

"Messrs. A,B and C were the owners of an undivided one third interest each in certain real estate situate in Lawrence County, Missouri.

"On the 7th day of November, 1941 this real estate was sold at a tax sale and Mr. D. became the purchaser at the price of $150.00 and received a Tax Sale Certificate of Purchase for same.

"After the delinquent taxes and expenses of sale were deducted from the $150.00 there was $81.56 left.

"On the 9th day of March 1942 A and B Conveyed by Quit Claim Deed, all right, title and interest they had in the real estate, to D for the sum of $25.00 each.

"Mr. D is now demanding from the County Court the interest of A and B in the $81.56 balance.

"It appears to me that the only interest A and B had to convey to D would be the right of redemption and that D is not entitled to any interest in the $81.56 but that A and B should receive their respective share of it."

Section 11132, R. S. Mo., 1939, is in part 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; or if he has doubt, or a dispute arises as to the proper person, the same shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto.***"

The rights of a purchaser under a quitclaim deed are stated in the case of Starr v. Bartz, 219 Mo. 47, 59, in the following language:

> "***It is the law of this State that a purchaser for value under a quitclaim deed acquires whatever title the grantor had at the time of the delivery of the deed. (Wilson v. Albert, 89 Mo. 537; McAnaw v. Tiffin, 143 Mo. 667.) We have also held that a purchaser for value under a quitclaim deed is under the protection of our registry act and that his title, so acquired, is good against a prior unrecorded deed of which he had no actual notice. (Fox v. Hall, 74 Mo. 315; Boogher v. Neece, 75 Mo. 383; Willingham v. Hardin, 75 Mo. 429) But that is the extent to which our law has gone in upholding the title under a quitclaim deed.***"

The office of a quitclaim deed is defined in 26 C.J. S., page 181, Section 8, as follows:

> "A quitclaim deed is one which purports to convey, and is understood to convey, nothing more than the interest or estate in the property described of which the grantor is seized or possessed, if any, at the time, rather than the property itself.***"

Therefore, under the statement of facts in your inquiry, there being no other lien against the property sold under the general tax lien at the time of such sale,

the surplus, by virtue of Section 11132 supra, belonged to the owners at the time of its accrual. Therefore the sole question is whether the owners conveyed their interest in and to the surplus by expression or implication in a subsequent contract--the quitclaim deed.

Under the above quoted rule a quitclaim deed conveys nothing more than the interest or estate in the property described, owned at the time of such conveyance.

In the case of Bray v. Conrad, 101 Mo. 331, "the only question in the case is as to the construction of her deed, she insisting that by it she only released the land from her trust debt, and the defendant contending that by it she conveyed her dower interest as well". There the court at l. c. 336 held:

> "***she releases the land from the debt to the extent of all the interest in the land that was pledged for its payment that she had power to release, is a consistent reading upon the face of the whole instrument, and this included her dower interest. To this extent only can the grant, which is broad enough in its terms to convey any and every interest she may have had in the premises, be limited by the language of the recitals. That she could have limited her release to the interest of her deceased husband, upon which she acquired a lien by her purchase of the mortgage debt is beyond question, but she did not do so. And there is nothing in the recitals, or in the situation of the parties, their relation to, or the circumstances attendant upon, the transaction which would warrant the court in excluding her dower interest from the terms of the release when she did not choose to do so, the rule being that a deed will be construed to convey <u>whatever interest or estate</u> the grantor may have <u>in land at the time of its execution</u>, unless the deed shows the grantor's

intention was to pass a less estate or interest. 2 Devlin on Deeds, 849.

"A quitclaim deed contains operative words of conveyance. Wilson V. Albert, 89 Mo. 537. And, if by terms of her deed she has left a doubt upon its face as to what were her intentions, the difficulty is one of her own creation, and the benefit of the doubt ought to be given to the grantee.***" (Underscoring ours.)

The dower interest involved in the above decision was a dower interest in realty - not personalty - and was therefore conveyed because not reserved in the quitclaim deed. However, such deed only purporting to convey or release an interest in realty would not convey personalty, absent a description of such personalty in such instrument.

The case of Holly v. Rolwing, 230 Mo. App. 33, adjudicated a surplus, arising from a general tax sale, under a statute heretofore repealed, but similar to the above quoted statute. The court there held that such surplus belonged to the owner as against a levee district, holding a junior lien, which had been made a party to the suit. If the court had considered such tax surplus as having the status of realty - as contended by appellants - another conclusion may have been reached.

However, absent any question of a prior right or lien - such not being shown by the statement of facts in your opinion request - the tax surplus in this case was certainly personalty and, as such, became the property and was available to the owners upon accrual. No words are mentioned in such reported quitclaim deed showing an intent by grantors to divest themselves of their interest in such surplus.

Therefore, it is the opinion of this department that the co-owners, mentioned in the inquiry, are entitled to

their pro rata share in and to the surplus arising from the tax sale.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

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APPROVED:

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