

TAXATION: Surplus of proceeds of tax sale to be paid
only after order of County Court.

January 2, 1936. 1-4



Honorable Wayne V. Slankard
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Mr. Slankard:

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

"A is the mortgagee of a certain tract of land. This land was sold for taxes and at the tax sale was bid in by A, and his bid left in the hands of the County Treasurer a surplus of \$90.00. He now demands that the County Treasurer pay this surplus to him by virtue of his being the mortgagee of the original owner.

Would like to know whether or not the County Treasurer is authorized to pay the surplus to A as the Mortgagee."

On April 5, 1935, this office rendered an opinion to the Honorable Joseph T. Tate, Prosecuting Attorney of Gasconade County, in which the following conclusion was reached:

"In conclusion, it is our opinion that where a surplus exists after the sale of real estate for taxes, such surplus should be paid to the owner of the property, if only one person has any interest therein; that

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if the collector is satisfied that there is a valid recorded unsatisfied mortgage against the property, payment to the extent of the then mortgage debt could be made to the mortgagee and should not be paid to the mortgagor, and that if there is any doubt about the person to whom payment should be made the safest procedure for the collector would be to turn the money into the county treasury under R. S. Missouri 1929, Section 9939, as amended by Laws of 1933, page 425, 428, leaving proof of ownership to be made to the county court under that section."

We assume from your communication that the County Collector was doubtful as to the proper person who was entitled to the surplus and that he accordingly turned over the surplus to the County Treasury in accordance with Section 9959, page 428, Laws of Missouri 1933. Section 9959 also provides:

"County Courts shall compel owners or agents to make satisfactory proof of their claims before receiving their money: Provided, that no county shall pay interest to the claimant of any such fund."

The foregoing provision unquestionably contemplates that some form of written demand should be filed by the claimant with the County Court and that the same should be heard and considered by the Court and a formal order made as to allowance or refusal of the claim. In this connection it might be stated that it would not be out of the way for the County Court or the Clerk thereof to advise the title holder of the property of the filing of such claim by the mortgagee so that in the event the title holder or mortgagor also desired to

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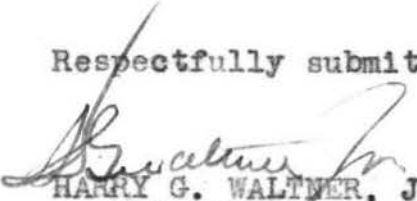
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present a claim for the surplus the County Court could be fully advised before making any order relative to the disposition of the surplus. We do not wish to be understood as holding that the latter procedure is a specific requirement of the law but merely make that suggestion for the purpose of eliminating if possible any misunderstanding on the part of the taxpayer as to the disposition of the proceeds of the sale.

We herewith enclose to you a copy of the opinion to Honorable Joseph T. Tate for your examination.

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

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

HGW:MM
Enclosure.