

ATION AND : Unless drainage, levee and special improvement
ENUE : districts have protected their interest by
paying the general taxes or redeeming before
the third general tax sale, they have thereby
lost their claim for assessments for the parti-
cular years involved. Also they must redeem
the certificates of purchase as provided in
Section 9963f, supra; as a condition precedent to
August 11, 1939: the foreclosure of their lien.

Mr. Alvin Smyth
Treasurer & Ex-officio Collector
Stoddard County
Bloomfield, Missouri



Dear Mr. Smyth:

We desire to acknowledge your letter of August
5, 1939, which is as follows:

"A few days ago, I received a copy of Senate
Bill No. 311, amending the Jones-Munger Law, and
I am advised that this bill has been signed by
the Governor and will become operative before the
November sales.

"In reading Section 9963f of this amendment,
I notice the following sentence: 'But no drainage,
levee or any other special improvement district
shall foreclose its lien against any property sold
under this act until it has redeemed as provided
herein.' It is presumed, of course, that this
applies only to first and second sales, there
being no redemption period after a third sale.
However, this provision, coupled with the fact
that hereafter there will be no redemption period
after a third sale, immediately raises a couple
of questions regarding conflicts between sales
for general taxes and sales for drainage taxes
for the same years.

"As an example, we shall say that a tract of
land in a drainage district is offered at third
sales in November, 1939 under the amended, Jones-
Munger law for the years 1935, 1936, 1937 and
1938. At the same time, a suit pending in Cir-
cuit Court on the drainage taxes for the same
years. At the Jones-Munger sale, this property

is sold to the highest bidder and a deed immediately issued, as provided in Section 9953a of Senate Bill No. 311. There being no redemption period, does the issuance of the deed under the Jones-Munger sale nullify the lien of the drainage district and bar further action or foreclosure under the pending suit for the drainage taxes? Also, will Section 9963f require the drainage districts to redeem certificates issued in 1937 and 1938 in order to pursue to foreclosure suits already filed on drainage taxes for the same years for which the certificates were issued? I have a number of drainage tax suits pending that come under this classification and there is a question in my mind as to whether or not I shall have the right to foreclose under these suits after Senate Bill No. 311 becomes effective unless the outstanding certificates are redeemed by the several drainage districts involved.

"Your opinion on these questions will be very much appreciated."

Section 9963f of Senate Bill No. 311 of the 60th General Assembly of Missouri, is as follows:

"Any drainage, levee or any other special improvement district having a lien on any land or lot, upon which there has been issued a certificate of purchase, may, if authorized by the law creating such drainage, levee or other special improvement district, at any time within the period of redemption applicable to any certificate of purchase, deposit with the collector the amount necessary to redeem such lands. Upon any such deposit the collector shall give immediate notice thereof to the holder of the certificate of purchase. But no drainage, levee or any other special improvement district shall foreclose its lien against any property sold under this act until it has redeemed as provided herein. The holder of

such certificate of purchase shall then surrender said certificate of purchase to the collector, who shall pay to the holder of the certificate the money so deposited by such drainage, levee or other special improvement district. In cases to which this section is applicable said certificate of purchase shall not be cancelled but shall be considered as legally assigned to the drainage, levee or other special improvement district making the deposit as hereinbefore set forth and shall be delivered by the collector to such district, noting thereon compliance with this section. Any such certificate may then be redeemed as provided for in this act from any such drainage, levee or other special improvement district; if not redeemed, then any such drainage, levee, or other special improvement district shall be entitled to a collector's deed, in the same manner and under the same conditions as provided for in this act as to other holders of a certificate of purchase."

Section 9952a of Senate Bill No. 94, Laws of Missouri for 1933 is, in part, as follows:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale;
* * * * "

Section 9956a, thereof is, in part, 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: * * * "

Section 9953a of Senate Bill No. 31, supra, is as follows:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell same to the highest bidder, and there shall be no period of redemption from such sales. No certificate of purchase shall issue as to such sales but the purchaser at such sales shall be entitled to the immediate issuance and delivery of a collector's deed. If any lands or lots are not sold at such third offering, then the Collector, in his discretion, need not again advertise or offer such lands or lots for sale oftener than once every five years after the third offering of such lands or lots, and such offering shall toll the operation of any applicable statute of limitations. A purchaser at any sale subsequent to the third offering of any land or lots shall be entitled to the immediate issuance and delivery of a collector's deed and there shall be no period of redemption from such sales; provided, however, before any purchaser at a sale to which this section is applicable shall be entitled to a collector's deed it shall be the duty of the collector to demand, and the purchaser to pay, in addition to his bid, all taxes due and unpaid on such lands or lots that became due and payable on such lands or lots subsequent to the date of the taxes included in such advertisement and sale.

"In the event the real purchaser at any sale to which this section is applicable shall be the owner of the lands or lots purchased, or shall be obligated to pay the taxes for the non-payment of which such lands or lots were sold, then no collector's deed shall issue to such purchaser, or to anyone acting for or on behalf of such purchaser, without payment to the collector of such additional amount as will discharge in full all delinquent taxes, penalty, interest and costs."

Section 9953a, supra, provides that there shall be no period of redemption from the sale of lands at a general State and County third tax sale.

Section 9963f, supra, provides that any drainage, levee or improvement district may redeem from the certificate holder of a general tax sale "if authorized by the law creating such drainage, levee or other special improvement district at any time within the period of redemption applicable to any certificate of purchase.

The underscored part of the above section is construed by the Springfield Court of Appeals in the case of Drainage District No. 23 vs. Hetlage, 102 S. W. (2nd) 702, 709 wherein the court says:

"Ordinarily, the holder of an inferior lien has the right of redemption where it is not made a party or not served in a suit by the holder of a superior lien to foreclose its lien. * * * Section 10766 thereof expressly grants circuit court drainage districts the right, under certain circumstances, to bid on real estate offered for sale for state and county taxes and the right to redeem, but no such power or authority is vested by said section in county court districts. * * *"

Prior to the enactment of Senate Bill 94 many cases were decided by the court on the question involved. In Little River Drainage District vs. Sheppard, 7 S. W. (2d) 1013, the court said (p. 1014):

"The lien for state and county tax shall be paramount. The statute does not say that it shall necessarily destroy the district lien for special taxes. The plaintiff district, according to the stipulation and finding of the trial court, was not made a party to this proceeding. No person or corporation can be affected by a proceeding to which he or it was not made a party, and that applies to tax suits. For instance, 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."

In said suit the court held that because the drainage district was not made a party to the tax suit that said suit would not have the effect of extinguishing or satisfying the drainage district's lien. However, the court made this pointed observation (p. 1014).

"If the district had been made a party to the proceeding with an opportunity to meet and pay the general taxes at the time, a different question would be presented for consideration."

Also, in *McAnally v. Little River Drainage Dist. et al.*, 28 S. W. (2nd) 650, the Supreme Court of Missouri, en banc, made this remark:

"Since the ruling in *Little River Drainage District v. Sheppard*, 320 Mo. 341, 7 S. W. (2nd) 1013, respondents concede they lost their lien for delinquent annual installments levied prior to the levy and subsequent sale of the land in question for state and county taxes for the year 1926."

In case of *Holly vs. Rolwing*, 87 S. W. (2nd) 651, in enforcing a general tax lien a levee and drainage district were made parties defendant, judgment was rendered against them and the land sold. Construing their rights on this record, the court said:

" * * * Since the district had its rights and remedies as fully set out in section 10766, supra, and stood by and did not protect its interest as specifically provided in the statutes, it thereby lost its claim for taxes for the particular years involved. This does not mean that the district has lost any other rights, or that the landowner may defraud the districts by letting his land be sold for general taxes and have it bought by a friend and afterwards returned to the original owner, as claimed by defendants here. The statutory provisions clearly answer that argument. The districts may have

protected their interests by paying the general taxes, and thereby precluded any such fraudulent act on the part of the landowner as has been suggested here. It might under some circumstances be some burden on the part of the drainage or levee districts to use their funds for a while in paying the general taxes, but they were organized under such provisions of the statutes, and if the lands involved are not of such value to justify the district in paying the general taxes to protect the liens, of the districts, then under such condition there would be nothing lost to stand by and let the lands be sold for general taxes. But the condition was not true in this instance, and as a general rule it is not true. Certainly the lands in these districts are always worth more than the general taxes against them, and the district's rights and the rights of the bondholders may be protected if the board of supervisors will be vigilant in acting under the rights given by the statutes."

Under the provision of Senate Bill No. 94, supra, and Section 9952a, thereof, a notice being given as therein required, no owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale could establish that there was not due process.

CONCLUSION

Therefore, it is the opinion of this department that unless drainage, levee and special improvement districts have protected their interests by paying the general taxes or redeeming before the third general tax sale, they have thereby

Mr. Alvin Smyth

- 8 -

August 9, 1939.

lost their claim for assessments for the particular years involved. Also they must redeem the certificates of purchase as provided in Section 9963f, supra, as a condition precedent to the foreclosure of their lien.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

SVM:LB