TAXES: 1) The County Collector is empowered under Section 140.150, et seq., RSMo 1949, (Jones-Munger Act) to sell a leasehold interest in land and a building located thereon, assessed separately from the fee and against the lessee; 2) The conveyance authorized by Section 140.420, RSMo 1949, should be in the usual form describing the lessee's interest in the land and the building; 3) It would not be proper to assess said leasehold and building to the owner of the fee and the lessee jointly.

FILED
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July 26, 1954

Honorable H. K. Stumberg
Prosecuting Attorney
St. Charles County
St. Charles, Missouri

Dear Mr. Stumberg:

We render herewith our opinion based upon your request of November 16, 1953, which request reads as follows:

> "In St. Charles County, there is a number of Club Houses owned by individuals and placed on lease or rented ground. In most cases the cost of construction has been borne by the lessee. For a number of years these club houses have been assessed against the lessee, owner of the building and have been carried in real estate tax books in this County. The County Collector has asked me to obtain your opinion on the following questions:
>
> "Is the County Collector empowered to sell the improvements or lease lend under the Jones-Munger Act? If so, what kind of Deed does he give Certificate of purchaser after two years? Would it be proper to assess this against the land owner and the lessee jointly?"

We begin by pointing out that it is proper to assess the leasehold interests and the building (owned by the lessee as your request states) as "real estate" and to the lessee. This practice is sanctioned by State of Missouri ex rel. vs. Mission Free School, 62 S.W. 998, 162 Mo. 332. In that case

one Thompson had leased certain real estate from the Mission Free School and had erected thereon a building. The lease provided that said building should remain the property of Thompson, the lessee. The Court said at Missouri loc. cit. 337:

> "* * * All property except such as is specifically exempted by the Constitution and the statute made in pursuance thereof, is subject to taxation, and we can see no difficulty in assessing the separate and distinct property of Thompson in this building any more than would be encountered in assessing the property of any other individual. Whether it is real or personal property, or whether the State is bound to regard it as personalty, is not now the question. The point is, is it separately liable to taxation as his property? We hold that it is, And it is Thompson's duty to list it just as every other taxpayer is required to list his property or suffer the penalties. The point may be new in this court, but has often been solved in other jurisdictions. (People ex rel. Muller v. Board of Assessors, 93 New York, 308; People ex rel. v.Commrs. of Taxes, 82 N.Y. 459; Russell v. City of New Haven, 51 Conn. 259; Smith v. Mayer, 68 N. Y. 552.)
>
> "In most States the interest of Thompson under a lease like this is real estate, and as our statute provides that the words 'real estate' shall be construed to include all interest and estate in lands, tenements, and hereditaments (sections 4917 and 4916, Revised Statutes 1889), little doubt can exist that Thompson's interest in this realty and building should be assessed as real estate. * * *."

You ask then whether the Collector can sell the improvements and leasehold interest under Section 140.150, et

seq., RSMo 1949, popularly known as the Jones-Munger Act. Our opinion is that he can. Said Section 140.150, subsection 1, reads thus:

> "1. 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 chapter on the fourth Monday in August of each year ."

The term "land and lots" we take to have the same meaning as "real estate" under Section 137.010, subsection 2, RSMo 1949, and to include a leasehold interest and building such as we are here considering. State vs. Mission Free School, supra.

You ask what kind of deed the Collector gives the purchaser after the redemption period? Section 140.420, subsection 1, RSMo 1949, provides that the Collector "shall execute to the purchaser, his heirs or assigns, in the name of the state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, * * *".

The conveyance would be in the usual form describing the interests of the lessee -- a leasehold interest, and the building located thereon.

Although the statute says that the conveyance shall vest in the grantee "an absolute estate in fee simple" subject to certain claims, this does not mean that the grantee in all cases receives an estate of inheritance; the term "fee simple" is not used here in its technical sense. It evidently means only that the tax deed cuts out all encumbrances junior to the lien for taxes for which the property was sold. If "fee simple" were used in its technical sense it would mean that a life estate or a leasehold interest could not be assessed and sold separately from the reversionary interest; and it has been recognized by many Missouri cases that they can be so separated for tax purposes. Duffey vs. McCaskey, et al., 134 S.W. (2d) 62, 65 (14); Bradley vs. Goff, 243 Mo. 95, 147 S.W. 1012, both cases involving life estates; State vs. Mission Free School, supra.

You then ask whether it would be proper to assess "this" (presumably the leasehold and buildings) against the lessee and owner of the fee jointly? We think not. Lands are to be assessed in the name of the owner if known. Section 137.215,

subsection 1, RSMo 1949. The owner of the fee is not the owner of the leasehold or of the building. As the Court said in State ex rel. vs. Mission Free School, supra, at Missouri loc. cit. 336:

> "As there was no assessment of Thompson's building by the assessor, and as his ownership is distinct from that of the Mission Free School, the assessment of his building as a part of the school's lot was clearly erroneous, as the law requires all property in this State to be assessed to the owner if known, and this lease was open to the assessor. As said on the former appeal, Thompson is not to be subjected to the tax on the ground, nor the school, even if not wholly exempt, to pay the tax on his building. * * *."

Also, in State vs. Convention Hall Association, 301 Mo. 663, 257 S.W. 113, the Court said, Missouri loc. cit.674:

> "As said in the foregoing case the assessment and levy of taxes is purely statutory, and the statutes require lands and real estate to be assessed in the name of the owner thereof. The fee to both lot and building was in the city of Springfield. The property itself should have been assessed (if subject to assessment and taxation) to the owner, the city of Springfield. The leasehold estate (if subject to assessment and taxation at all) should have been assessed to defendant, unless the terms of the lease precludes this view. The assessment here is not upon the leasehold and hence not upon anything owned by the defendant. This suffices for an affirmance of the judgment."

CONCLUSION

1) The County Collector is empowered under Section 140.150, et seq., RSMo 1949, (Jones-Munger Act) to sell a

Hon. H. K. Stumberg

leasehold interest in land and a building located thereon, assessed separately from the fee and against the lessee; 2) The conveyance authorized by Section 140.420, RSMo 1949, should be in the usual form describing the lessee's interest in the land and the building; 3) It would not be proper to assess said leasehold and building to the owner of the fee and the lessee jointly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Very truly yours

JOHN M. DALTON
Attorney General

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