COUNTY TREASURER: Should not pay surplus arising from sale of land for taxes to grantee in quitclaim deed from former owner unless deed contains provisions transferring right to claim surplus.

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October 17, 1945

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Honorable Henry C. Walker
Prosecuting Attorney
Kennett, Missouri

Dear Mr. Walker:

Under date of August 2, 1945, you wrote the Attorney General making the following request for an opinion:

> "The County Court of Dunklin County has instructed me to write you and request your opinion on the following questions.
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> "A parcel of land was sold under the Jones-Munger law in 1934. After the delinquent taxes and costs were paid there remained a surplus of $464.23 in the Ex-officio Collector's hands. No owner claimed this money, and it was paid into the county treasury, as provided in Sec. 11159 R. S. Mo. 1939. On November 30, 1954, the date of said sale Gustave W. Niemann was the record owner of the land. On July 7, 1945 Gustave W. Niemann gave a Quit Claim Deed to said land to W. B. Prosley for the consideration of $5.00. This is just a straight Quit Claim Deed, and there is no assignment therein. After the execution of said Deed, W. B. Prosley filed his claim with the County Court claiming the surplus from the sale of said land remaining in the County Treasury.

> "Question: Is the grantee in a Quit-Claim Deed, made after the sale of land for delinquent taxes, from the owner of the land at the time of the sale thereof, entitled to the surplus money from the sale of said land, upon filing a claim with the County Court? "

The delay in furnishing this opinion is regretted very much but at the time of the request the office was badly understaffed and there was a great amount of business on hand, some of which required immediate attention, so that matters which did not seem to require immediate attention were laid over until the more pressing matters were taken care of.

It would be better to have the question determined by a court of competent jurisdiction than to rely upon an opinion from this office. The determination by a court would be final and the opinion of this office is not. If the county treasurer should rely upon this opinion and act accordingly, there still would remain the possibility of litigation. A further reason for this suggestion is that the deed is not before us and we have no knowledge of the circumstances surrounding the making of the deed nor of the intention of the parties, both of which can be of importance in determining the effect of the deed.

Section 11159, R. S. Mo. 1939, referred to in your letter, is as follows:

> "When real estate has been sold for taxes or other debt by the sheriff or collector of any county within the state of Missouri, and the same sells for a greater amount than the debt or taxes and all costs in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff or collector of the county, when such sale has been or may hereafter be made, to make a written statement describing each

> parcel or tract of land sold by him for a greater amount than the debt or taxes and all costs in the case, and for which no owner or owners, agent or agents can be found, together with the amount of surplus money in each case, which statement shall be subscribed and sworn to by the sheriff or collector making the same before some officer competent to administer oaths within this state, and then presented to the county court of the county where such sale has been or may hereafter be made; and on the approval of the statement by the court, the sheriff or collector making the same shall pay the said surplus money into the county treasury, take the receipt in duplicate of said treasurer for said overplus of money and retain one of the said duplicate receipts himself and file the other with the county court, and thereupon the court shall charge said treasurer with said amount. And said treasurer shall place such moneys to the credit of the school fund of the county, to be held in trust for the term of twenty years for the owner or owners or their legal representatives. And at the end of twenty years, if such fund shall not be called for, then it shall become a permanent school fund of the county. 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."

Under this section of the statutes the county treasurer, for a period of twenty years, holds the money, under the supervision of the county court, as a trustee for the owner of the land at the time of the sale or for his agent. It is the duty of the treasurer for this period of twenty years, upon

satisfactory proof to the county court, to pay the money to the owner of the land at the time of the sale or to his assigns or legal representatives. Reid v. Mullins, 48 Mo. 344, 345.

The position of the county treasurer being clear, it is necessary to determine, the effect of a quitclaim deed, to land sold for taxes, executed several years after the tax sale, and whether or not such a quitclaim deed would convey the ownership of the surplus arising from such tax sale after all taxes and costs of sale were paid.

As previously mentioned, we do not have the quitclaim deed and must assume that it is in usual form and that the words used are, "remise, release and forever quit claim," and that the property quitclaimed is the land described, together with "all the rights, immunities, privileges and appurtenances thereto belonging." If this assumption is not correct then what follows would not be applicable.

Attention is directed to the following brief quotation from the case of Williams v. Reid, 37 S. W. (2d) 537, l. c. 541 (Mo. Sup.):

> "* * * To remise, release, and quitclaim designated land is generally understood to mean that the grantor releases any interest he may have in the land at the time, but that is all."

Under the quitclaim deed only such interest as the grantor had in the premises at the date of the deed passed, C. J., Vol. 18, p. 314, par. 299; Shelton v. Morrell, 232 Mo. 358. This being true, no interest in the premises described in the deed passed to the grantee, for the interest of the grantor in the land had been terminated by the foreclosure of the tax lien if the tax sale was regular and valid. And in the existing situation it must be assumed the proceedings were regular and valid, as over ten years had elapsed between the time of the sale and the date of the quitclaim deed.

The owner at the time of the sale having quitclaimed his interest in the land, together with "all rights, immunities, privileges and appurtenances thereto belonging," it is necessary to ascertain what these words cover.

It is a general rule that the deed to property covers all rights, privileges and immunities, rightfully belonging to the property deeded, which are essential to a full enjoyment of the property. C. J. S., Vol. 26, p. 386, Sec. 106. These things include buildings, fences, easements, right of ways etc., but do not include movable personal property on the land or personal rights arising out of the ownership; C. J. S., Vol. 26, p. 390, Sec. 106, par. "(d)"; also Devlin on Real Estate, Third Ed., Vol. 2, Secs. 862a and 863.

No Missouri case squarely in point has been found, but we wish to direct your attention to the case of Jackman v. St. Louis & Hannibal R. R. Co., 304 Mo. 319. In this case a railroad company had given a mortgage to secure payment of certain bonds. The mortgage conveyed the following (l. c. 323):

> "' . . . the railway of the said parties of the first part now constructed and that may hereafter be constructed from the city of Hannibal in the State of Missouri through the counties of Marion, Ralls, Pike, Lincoln and St. Charles to a connection with the Wabash, St. Louis and Pacific Railway at Gilmore Springs in the County of St. Charles, a distance of eighty-one and three-quarters miles or thereabouts. Together with all and singular the railroad, railways, rails, turn outs and side track bridges, fences, fixtures, buildings, lands for tracks, depots, tenements, appendages and appurtenances owned or hereafter to be acquired by the said parties of the first part; also all railway depots or stations with the buildings and fixtures thereon erected or to be erected together with the shops, machinery and tools, rolling stock and other corporate property incident or appurtenant to its operation, and all the chartered rights, franchises and privileges of said parties of the first part and all the estate, right, title and interest, property claim and demand as well at law as in equity of

> the said parties of the first part to the same and every part and parcel thereof.'"

Later the mortgage was foreclosed and the purchaser at the foreclosure reorganized the railroad company as a new corporation. Mary Jackman, a judgment creditor of the company which executed the mortgage, instituted the suit for the purpose of satisfying her judgment out of certain assets of the mortgaging railroad company which had been taken over by the purchaser at the foreclosure sale, which he contended were not covered by the mortgage. From this case we quote at length, beginning on l. c. 326:

> "This requires a construction of the expressions, 'appendages and appurtenances,' and property 'appurtenant to its operation.' 'Appurtenance' is defined as an appendage; 'that which belongs to something else.' (4 C. J. 1466.) The United States Supreme Court in Humphreys v. McKissock, 140 U. S. 304, l. c. 314, used this language: 'Under the term "appurtenances," as used in the mortgage in question, only such property passes as is indispensable to the use and enjoyment of the franchises of the company. It does not include property acquired simply because it may prove useful to the company and facilitate the discharge of its business. A distinction is made in such case between what is indispensable to the operation of a railway and what would be only convenient. (Bank v. Tennessee, 104 U. S. 493-496.)'
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> "The Liberty bonds were treated by the Railway Company as independent of the mortgage, as liable for the payment of the plaintiff's claim, because they were put up to indemnify a surety of its appeal bond. They certainly are not appurtenances or appendages, nor incident to the operation of the railroad. These bonds have nothing to do with the operation of the railroad and could not be covered by those terms. The same may be said of the fine

of $3000 paid by the Railway Company and released to the Railroad Company after it had acquired the lines of the Railway Company. As to the $45,000 cash which was turned over to the Railroad Company on the foreclosure of the mortgage, the trial court found that it was not described in the mortgage nor included in the foreclosure decree, nor intended to be transferred. The court found that certain money and other things acquired by the Railroad Company did pass by the foreclosure decree:

Sum due from agents and conductors	$ 836.77;
Materials and supplies on hand of value of	9,975.05;
Traffic car, bills receivable, in amount of	870.61;
Miscellaneous Bills Receivable, and other items	6,028.22

"These items, it was held, were appurtenant to the operation of the property described in the mortgage and passed by the foreclosure decree. But the $45,000 cash, not included in those items, was properly held by the trial court to be not within the terms of the mortgage. It was not indispensable to the enjoyment of the property, nor to its operation, although it might have been convenient to use in that connection. We hold, therefore, that the three items mentioned were not covered by the mortgage under the designations 'appendages,' 'appurtenances,' or 'appurtenant to its operation.'

"The appellant, however, emphasizes the closing part of the description where, after describing the specific property, rights, franchises, etc., of the mortgagor, it concludes with this expression:

"'And all the estate, right, title and interest, property, claim and demand, as well

at law as in equity of the said parties of the first part to the same and to every part and parcel thereof.'

"Appellant spent a great deal of time in its brief in quoting definitions of 'personal property.' 'Personal property' is not mentioned in the description, but 'property' in the clause last quoted, it is argued, includes the very personal property in dispute here; property is so general a term, so inclusive in its significance, that this particular property could not escape.

"This conclusion can be reached only by detaching the clause last quoted from its context. It plainly refers to the property previously mentioned and the particular interest which the mortgagor had in that property. Notice that the word 'property' is associated with 'estate,' 'right,' 'title,' 'interest,' 'claim' and 'demand,' and these words are related to the preceding description by the words 'to the same, and to every part and parcel thereof.' The same what? That, of course, means the things previously enumerated, railroad lines, depots, etc. 'Property' is used there in the same way exactly as 'interest,' 'right' and title' are used. It is used in the same sentence and in the same connection and with the same general significance. The appellant seems to claim that because 'property' has a meaning as applied to a specific thing, it may be detached from this context and construed as if it were used separately.

"This is a misconception of the use of the word 'property.' Its primary meaning as defined in Webster's Dictionary is 'the exclusive right to possess, enjoy, and dispose of a thing.' Cyc. gives the primary definition as 'the right and interest which a man has in lands and chattels to the

> exclusion of others.' (32 Cyc. 647-648.) The term is applied to the thing itself as a secondary meaning. That was distinctly held by this court in the case of St. Louis v. Hill, 116 Mo. l. c. 533, quoting from encyclopaedias and textbooks. A man has an interest and property in a house. He also has the house. When we speak of his property in a house we certainly do not mean the thing itself but his right to it. The primary meaning of the word property was intended in this description in the mortgage. There might be some room for dispute if the word were used alone, but it is used in connection with other words and used in such relation to the specific things, such as railway lease, depots, etc., so that it is not susceptible of any other meaning than in the sense of the 'right' or 'title' 'to' the things described. Therefore, the money and bonds under consideration here are not described in the mortgage, did not pass by the decree, and are subject to the payment of the plaintiff's judgment."

This case, while not squarely in point, does indicate that a conveyance of real property does not carry personal property that is not essential to the enjoyment of the real property granted unless the terms of the conveyances so indicate.

In the matter here under consideration the grantor had owned real property, a tax lien had been foreclosed upon his property, from the proceeds of the foreclosure his tax debts and the costs of the sale had been paid leaving a balance in cash to represent his former interest in the land. In other words, his interest in the land had been converted to personal property, cash, or rather the right to claim the cash from the county treasurer. Ten years after this time he executed a quitclaim deed to the land which had been sold at the tax sale. By this quitclaim deed the grantor conveyed whatever interest he had in the land described, together with all of the rights, privileges and immunities which were essential to the enjoyment of the estate granted. The estate granted amounted to nothing.

The right or privilege to claim the surplus from the tax sale might add materially to the enjoyment of the grantee named in the quit claim deed, it is not essential to the use and enjoyment of the estate granted (nothing) and furthermore the deed could not operate to transfer the title to personal property or the right to claim personal property which was not essential to the enjoyment of the estate granted.

Conclusion.

It is, therefore, the conclusion of the Attorney General that the quitclaim deed mentioned in your letter would not operate to transfer the right to claim the surplus arising from the proceeds of the sale of the land at tax sale.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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