

TAXATION: County has lien for delinquent taxes on
INSURANCE: proceeds from insurance policy paid for
DELINQUENT TAXES: destruction of insured leased building
LIENS: assessed separately from land.



October 2, 1953

Honorable Haskell Holman
State Auditor
State of Missouri
Jefferson City, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department reading as follows:

"Please furnish this department with an official opinion on the following question.

"Where a taxpayer owned a building assessed to him that was built on leased ground failed to pay his taxes and a subsequent purchaser of the leased building paid all of his taxes, does the county have a lien on a check (or rather the funds representing the said check) for insurance for the destroyed building (said building having burned down after being purchased from the original delinquent taxpayer); or should the court strike the taxes in question from the tax books by virtue of the provisions of Section 140.120 R.S. Mo., 1949, on the theory that although the county had a lien for taxes on the building, same would be lost when the building was destroyed by fire?"

Section 139.110, RSMo 1949, provides as follows:

"1. In the event of the destruction by fire, windstorm or tornado of any permanent buildings and/or improvements

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situate upon any land or lot, and which permanent buildings and/or improvements at the time of destruction were situate upon any land or lot against which taxes were then levied and assessed, and was so situate at the time of such levy and assessment, the lien of such taxes shall attach to and follow any insurance that may be upon said property at the time of its destruction, and the insurer shall pay to the county collector from said insurance money, and limited to the extent thereof, all taxes, interest and cost then due, levied and assessed against the identical land or lot upon which was situate the buildings and/or improvements destroyed, and such payment shall discharge the obligation of the insurer to the amount paid; provided, however, if in the opinion of the county collector the destruction of such building and/or improvement will not prejudice the collection of such taxes, then in such event the county collector shall be authorized, in writing, addressed to the insurance company or companies, to waive and/or release the lien by this section given. The lien given by this section shall be a first and paramount lien upon the money due in event of the contingency herein referred to.

"2. The assured or person making claim for loss on any permanent buildings and/or improvements from any insurance company, shall file with such company a statement from the collector or collectors in writing, with such claim, that there are no taxes against said buildings and/or improvements and describing said property, or that taxes exist against the same and the amount and description thereof, and whether or not such lien is waived, as the case may be, and no such claim for loss may be maintained until such statement shall have been filed by claimant.

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"3. The provisions of this section shall not apply unless the loss exceeds fifty per cent of the face value of the amount specified in the policy and applicable to the property involved."

We believe it to be clear from the provisions in subsection (2) of such section that there is a lien on insurance received because of destruction of a building or buildings, whether the land and the building or buildings were assessed together or assessed separately.

Therefore, the county has a lien which attaches to and follows any insurance upon buildings the subject of a lease which at the time of destruction had delinquent taxes levied and assessed against such buildings and which buildings were assessed separately from the land on which they stood.

Of course, the provisions of subsections (1) and (2) of such section are applicable only in the instance specified in subsection (3). We assume that the building about which you inquire is one that comes within the purview of such subsection (3).

CONCLUSION

It is the opinion of this office that where a building, the subject of a lease, which is assessed separately from the land on which it stands, is destroyed by fire, that the county has a lien on the insurance money collected for such destruction to the amount of any delinquent taxes which have been levied and assessed against such building.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. C. B. Burns, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

CBB:lrt