

PRACTICE OF LAW: Collector of taxes of a fourth class county may fill
TAX DEED: in the blanks of a tax deed; he may not charge for
TAX SALE: filling in the blanks of a tax deed.
COLLECTORS:



January 23, 1957

Honorable J. B. Schnapp
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Mr. Schnapp:

This is in answer to your request for an official opinion from this office which reads as follows:

"Does the Collector of Taxes of a Fourth Class County have the authority to prepare a Tax Deed to purchaser at a Tax Sale and charge for the same; or is he barred from actually preparing the deed and charging for the same, because such an act might be construed the practice of law, and therefore be in violation of the statute against the practice of law by laymen."

Chapter 140, RSMo. and Mo. Cum. Supp. 1955, is entitled "Collection of Delinquent Taxes, Generally." In answering your specific question, it will be only necessary to discuss three sections within that chapter. They are Sections 140.420, 140.460, and 140.470, RSMo. 1949.

Section 140.420, RSMo. 1949, which reads as follows:

"1. If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the county surveyor, the collector of the county in which the sale of such lands took place 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, subject, however to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was in-

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ferior to the lien for taxes for which said tract or lot of land was sold.

"2. In making such conveyance, when two or more parcels, tracts, or lots of land are sold for the nonpayment of taxes to the same purchaser or purchasers, or the same person or persons shall in anywise become the owner of the certificates thereof, all of such parcels shall be included in one deed."

provides among other things that the collector, wherein a tax sale has been had, shall execute in the name of the state, a conveyance of the land sold to the purchaser. Section 140.460 RSMo. 1949, which reads as follows:

"1. Such conveyance shall be executed by the county collector, under his hand and seal, witnessed by the county clerk and acknowledged before the county recorder or any other officer authorized to take acknowledgments and the same shall be recorded in the recorder's office before delivery; a fee for recording shall be paid by the purchaser and shall be included in the costs of sale.

"2. Such deed shall be prima facie evidence that the property conveyed was subject to taxation at the time assessed, that the taxes were delinquent and unpaid at the time of sale, of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, that said land or lot had not been redeemed and that the period therefor had elapsed, and prima facie evidence of a good and valid title in fee simple in the grantee of said deed; and such deed shall be in the following form, as nearly as the nature of the case will admit, namely:

Whereas, A. B. did, on the ___ day of ___, 19___, produce to the undersigned, C. D., collector of the county of ___ in the state of Missouri, a certificate of purchase, in writing, bearing date the ___ day of ___, 19___, signed by E. F., who at the last mentioned date was collector of said county, from which it appears that the said A. B. did, on the ___ day of ___, 19___, purchase at public auction at the door of the

courthouse in said county, the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to ___ for the sum of ___ dollars and ___ cents, being the amount due on the following tracts or lots of land returned delinquent in the name of G. H., for nonpayment of taxes, costs and charges for the year ___, namely: (here set out the lands offered for sale); which said lands have been recorded, among other tracts, in the office of said collector, as delinquent for the nonpayment of taxes, costs, and charges due for the year last aforesaid, and legal publication made of the sale of said lands; and it appearing that the said A. B. is the legal owner of said certificate of purchase and the time fixed by law for redeeming the land therein described having now expired, the said G. H. nor any person in his behalf having paid or tendered the amount due the said A. B. on account of the aforesaid purchase, and for the taxes by him since paid, and the said A. B., having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges, as above specified, and it appearing from the records of said county collector's office that the aforesaid lands were legally liable for taxation, and has been duly assessed and properly charged on the tax book with the taxes for the years ___.

Therefore, this indenture, made this ___ day of ___, 19___, between the state of Missouri, by C. D., collector of said county, of the first part, and the said A. B., of the second part, Witnesseth: That the said party of the first part, for and in consideration of the premises, has granted, bargained and sold unto the said party of the second part, his heirs and assigns, forever, the tract or parcel of land mentioned in said certificate, situate in the county of ___, and state of Missouri, and described as follows, Namely: (here set out the particular tract or parcel sold), To have and to hold the said last mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part, his heirs and assigns forever, in as full and ample a manner as the collector of said county is empowered by law to sell the same.

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In Testimony Whereof, the said C. D., collector of said county of ___, has hereunto set his hand, and affixed his official seal, the day and year last above written.

Witness: _____ (L.S.)
Collector of ___ County.

State of Missouri, ___ County, ss:

Before me, the undersigned, ___, in and for said county, this day, personally came the above-named C. D., collector of said county, and acknowledged that he executed the foregoing deed for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and seal this ___ day of ___, 19__.

_____ (L.S.)"

provides among other things that the conveyance shall be executed by the county collector and under his hand and seal. You will note in the section quoted above that the form the collector must use and execute is set out in detail. The deed must be in substantial compliance with that form. Thus, it is apparent that someone must fill in the blanks of the deed form, but nowhere in Chapter 140 does it say who shall do it. It merely says the Collector shall "execute the deed." Thus, where a statute provides a certain person must execute a deed, it does not necessarily follow that person must actually prepare the deed by filling in the blanks. An executed deed is one that has been prepared in final form, signed, sealed and delivered. As authority for this proposition, see Mastin Realty and Mining Co. v. Commissioner of Internal Revenue, 130 F. 2d 1003, 1005 (1-2,3); and Tubbs v. Gatewood, 26 Ark. 128, 131.

Therefore, we hold a collector of taxes of a fourth class county may fill in the blanks of a tax deed, and further, that this limited act does not constitute the practice of law. The entire case of Hulse v. Criger, 363 Mo. 26, 247 S.W. 2d 855, discusses this problem thoroughly. That case is applicable to our problem here, At page 861 (6,7), the court says:

"[6,7] Likewise, general warranty deed and trust deed forms are so standardized that to complete them for usual transactions requires only ordinary intelligence rather than legal training. They are in fact less complicated than contracts for sale of real estate. We

know that these forms are furnished to the public at the offices of Recorders of Deeds through the state. We think the preparation of these instruments in closing transactions in which a real estate broker is acting as broker is so closely related to the transaction and the business of the broker as to be practically a part of it and that he is not engaging in unlawful practice of law to prepare them under such circumstances. The same thing is true of ordinary short term leases, notes, chattel mortgages and trust deeds in transactions which the broker procures. However, he cannot properly make separate charges, in addition to his commission, for preparing any instruments or engage in the field of conveyancing and drafting contracts or other legal instruments for the public generally, with or without separate charge. Such conduct would not be any part of his business as a real estate broker but would be placing the emphasis upon conveyancing as a practice of law instead of on his services as a broker; and it would also violate the provisions of RSMo. 1949, chap. 484, V.A.M.S."

Furthermore, the filling in of the blanks of a tax deed does not require a legally trained mind even though their filling in causes certain legal consequences to arise. The act of merely filling in the blanks of a tax deed is ancillary to the collector's main duties. At page 862, the court in *Hulse v. Criger*, supra, says:

" * * * We think the guiding principle must be whether under the circumstances the preparation of the papers involved is the business being carried on or whether this really is ancillary to and an essential part of another business. The simplicity or complexity of the forms, the nature and customs of the main business involved, the convenience to the public, and whether or not separate charges are made, all have a bearing upon the determination of this question."

The deed set out above has been adopted by the legislature, and the collector merely has to fill in the blanks. Although not expressly authorized to do so, as a practical matter, it would fall upon him to do this limited act to properly carry out his duties in these tax sale situations. In 67 C.J.S., Officers, Section 110, the rule, as to what acts public officers are authorized to do, is set out. On page 396, it says:

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"The duties of a public officer are usually prescribed by statute, but it has been observed that such statutes seldom, if ever, define with precise accuracy the full scope of such duties. Generally the duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes. * * *."

To further buttress the above argument, we call your attention to the case of Costello v. City of St. Louis, Mo. Sup., 262 S.W. 2d 591, 596 (7-9). The court intimates that it is the collector who actually fills in the blanks of a tax deed. It held:

"Under the Jones-Munger Act, the proceedings preliminary to and the sale of property by the Collector for delinquent taxes is administrative in character; such preliminary proceedings and sale are non-judicial and ex parte in their nature. No court guides the Collector or his proceedings, and he proceeds upon his own advice. In making his land delinquent list, in his notice and advertisement of sale, in his conduct of the sale, and in his preparation and execution of his certificate of purchase and his deed the Collector must strictly follow and observe the admonition of the statutes in this summary process of taking away from the citizen the title to the latter's land. * * *."

In answering the rest of your question, we hold the collector of taxes in a fourth class county cannot charge for filling in the blanks of the tax deed. However, for each tax deed a person applies for he may charge \$1.50, whether he fills in the blanks or whether someone else does it. This includes the acknowledgement. Section 140.470, RSMo. 1949, allows the collector this amount. It reads as follows:

"1. In case circumstances should exist requiring any variation from the foregoing form, in the recital part thereof, the necessary change shall be made by the county collector executing such deed, and the same shall not be vitiated by any such change, provided the substance be retained.

"2. The county collector shall be entitled to demand and receive from the person applying therefor, for each tax deed, one dollar and fifty cents, which shall include the acknowledgement."

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If the collector charges an additional fee for filling in the blanks, this would amount to the practice of law. See Hulse v. Criger, supra, at page 863 (12,13). Also at this point, we call your attention to the famous case of Nodaway County v. Kidder, 344 Mo. 795, 129 S.W. 2d 857, 860, wherein the Supreme Court laid down the doctrine that if a public officer claims compensation for official duties performed, he must point out the statute authorizing such payment. In our case, the collector cannot point to any statute authorizing payment for filling in the blanks of a tax deed.

CONCLUSION

It is therefore the opinion of this office that a collector of taxes of a fourth class county may fill in the blanks of a tax deed, and such limited act does not amount to the practice of law; but that he may not charge for filling in said blanks, as this would amount to the practice of law, and further, he is not authorized to do so.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, George E. Schaaf.

Yours very truly,

JOHN M. DALTON
Attorney General

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