TAXATION:
TAX SALE:
COUNTY COURT:

In the event that a sale and conveyance of land for taxes is invalid because the taxes on said land had, in fact, been paid, the county is not liable for payments to the purchaser of such invalid sale except as provided in Section 140.530, RSMo 1949. The county in which the land is located does not warrant and defend title in a suit brought by the owner of the property sold at tax sale.

April 25, 1958

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Honorable Edward G. Westhouse
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Mr. Westhouse:

Reference is made to your request for an official opinion of this office, which request reads as follows:

> "I would appreciate it very much if your office would render an opinion for the County Court on the following matter.
>
> "In 1953, the Collector sold a parcel of land at a tax sale. In 1955, the Collector gave the purchaser a Collector's Deed on this land. Now the taxes on this land had always been paid, even up to the present time. Therefore the land should never have been advertised and sold under the Jones Munger Law. However, after the tax sale the taxes were also paid by the purchaser at the tax sale. Under Section 140.530, RS Mo, 1949, the County Court must reimburse the purchaser at the tax sale that sum of money which he paid at the tax sale and all subsequent taxes that the purchaser at the tax sale had paid, including six percent interest.
>
> "However, the purchaser at the tax sale through his attorney maintains that the County also owes him the amount of money which he expended in surveying the land purchased at the tax sale. He also maintains that the County warrants title and

> should defend any suit brought by the true owner. Is it your opinion that the County could not be liable for any sum except what was received from the purchaser at the tax sale and the sum received as taxes from and after the tax sale, including six percent interest and that the County must warrant and defend title?"

Section 140.530, RSMo 1949, to which you refer, provides that if the taxes have been paid before sale, the sale or conveyance shall be a nullity, and the purchase money, with interest, shall be paid to the purchaser out of the county treasury. Said section more fully provides as follows:

> "No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and for the first two enumerated causes, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the county court."

We have examined diligently the provisions of Chapter 140, V.A.M.S., and are unable to find any provision, other than Section 140.530, requiring the county to make a refund to the purchaser for an invalid tax sale. More specifically, we do not find any provision which would entitle the purchaser to reimbursement for the costs of a survey, out of the county treasury.

Secondly, it is the opinion of this office, that under the facts that you have outlined, the county does not warrant and defend title in a suit brought by the true owner. We do not find any statutory provision which imposes such a duty or obligation upon the county. The terms of a deed of conveyance, under a tax sale (see Section 140.460) would appear to strongly militate against any implied warranties by any party (Section 442.420) and certainly said deed does not contain any expressed warranties on behalf of the county. However, we do not believe that it is necessary to determine whether the deed does, in fact, contain implied warranties. Assuming (for the purpose of argument only), that the deed does contain warranties, they would not bind the

county. The county is not a party to the deed but, instead, the deed runs from the State and is executed by its agent, the county collector.

CONCLUSION

Therefore, it is the opinion of this office that in the event that a sale and conveyance of land for taxes is invalid because the taxes on said land had, in fact, been paid, the county is not liable for payments to the purchaser of such invalid sale, except as provided in Section 140.530, RSMo 1949.

It is the further opinion of this office that the county in which the land is located does not warrant and defend title in a suit brought by the owner of the property sold at tax sale.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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