

TAXATION: A tax sale of a particular piece of property predicated upon a publication of notice of sale, which
COLLECTOR: notice listed the name of C. C. Garrett, which name was neither the name of the record owner or the name of the owner appearing on the land tax book, both of the latter being in the name of C. G. Garrett, is invalid and that upon discovery of said defect prior to the delivery of a tax deed, the collector should refuse to issue to the certificate holder a deed.

July 21, 1960

Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri



Dear Mr. Burrell:

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

"On August 26, 1957, the county collector sold at the Court House door Tax Certificate No. 1192, covering property described as '1.86 acres E 172.5 ft W 994 ft NE 1/4 NE 1/4 north of the railroad Section 10, Township 29, Range 21, Greene County.

"On the tax sales book the property was listed in the name of C. C. Garrett, no address shown. The entry of the name was not exactly correct, since the deed showed the initials as C. G. Garrett. The property valuation as of 1955 was \$100.00.

"The purchaser of the tax certificate was Edwin J. Belknap, Route 2, Box 248B, Springfield, taxes \$26.97, purchase price \$50.00, surplus bid \$23.03.

"Mrs. Belknap has called at the office during the past week asking for a deed, at the time remarking that there was some misunderstanding as to the exact location of the property. She was sent to the assessor to check the location and the assessor advised her that the property belonged to her neighbor directly across the street, Jerome V. Carroll, Route 2, Box 248M, and was part of a tourist court and filling station.

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"In the absence of the writer, Mrs. Belknap was asked to return for further information and she did come back the same afternoon, at which time the writer asked her if she knew at the time she bought the property that it belonged to her neighbor. She replied, 'No', and showed a diagram which she had drawn just prior to the sale in the assessor's office, which diagram did not correctly show the location of the property.

"After purchase of the tax certificate the Belknaps paid taxes in 1958 and 1959, at which time the name shown on the tax statement was originally Jerome V. Carroll and this name had been scratched out by the collector's office and the Belknap name inserted as the taxpayer. Mrs. Belknap acknowledged that she had noticed that the name on the tax statement had originally been Jerome V. Carroll.

"The people who actually own this property, namely Jerome V. Carroll, were called by the collector's office and advised that apparently part of their property had been sold at a tax sale, at which time they showed considerable surprise and called at the office very shortly after the telephone message.

"It seems that all of this property, not only the part sold at the tax sale, but also the adjoining property with cabins on it, had been purchased in 1952 from C. G. Garrett and wife, the deed having been made in 1952 but apparently not delivered until June, 1956, when final payment was made on the purchase price. The deed was filed in the recorder's office in June, 1956, but this transfer having been made after the tax books for 1956 were turned over to the county clerk the new owner's name did not appear on the tax sale book or any of the original tax books for the years 1952 to 1956 inclusive.

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"In the recorder's office, there having been a long meets and bounds description, the record of transfers showed that part of the description covering the property with the cabins on it but not the part described above in the tax sale certificate, there having been noted on the recorder's books the words 'see record'. This means of recording the transfer made it difficult for the collector to ascertain in the early part of the year 1957 that the property listed in the tax sale certificate had been transferred subsequent to the making of the tax books for 1956 and prior years.

"The purchasers of this property advised the writer that they thought all the taxes had been paid, but these purchasers apparently erred; 1., In not checking the tax receipt to see if the description fully covered their property, and; 2., In apparently not having the abstract of title brought up to date at the time the deed was filed.

"At the time of the purchase there was a loan against this property with the Systematic Savings & Loan Company, and the Systematic Savings and Loan Company did pay taxes on the main part of the Motel property prior to the time the loan was paid off, and apparently they too overlooked paying all of the taxes on the two parcels of ground.

"Following notification by the collector that a portion of their property had been sold for taxes, the owners, Jerome V. Carroll, notified their attorney, James Keet, who called at the collector's office for information concerning the sale, and who advised the writer that he would offer the certificate purchaser the amount paid for the certificate plus interest in an effort to get the matter straightened out, or otherwise would probably institute suit to clear title to the purchasers, Jerome V. Carroll.

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"The collector has informed the tax certificate purchaser, Mrs. Belknap, that he would ask for legal advice before issuing a deed to this property for the reason that said collector was on notice that the entire transaction was involved in misunderstandings, some slight errors and some failure on the part of the property purchasers to take actions which would have prevented sale of the property.

"Except for the error in transcribing the initials of C. G. Garrett on the tax books, the sale of the property, the issuance of the tax sale certificate and advertising of the sale were entirely regular.

"The collector is asking for legal opinion as to his duties in view of the request of the tax sale certificate owner for a collector's deed."

We have been further supplied with the following additional information:

"This property was carried on the assessor's tax book in the name of C. G. Garrett.

"The original entry made by the assessor on the 1952 tax book was made with an addressograph plate on the automatic addressograph printing machine, and the letter 'G' on the plate evidently was somewhat worn, as it could easily be taken for the letter 'C', and was so taken by the clerks in the collector's office who transcribed the unpaid tax for the year 1952 to the back tax book and later to the tax sales book.

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"Our understanding is that Mr. Garrett sold this property in 1952, making a deed at that time which was not recorded until June, 1956, and that Mr. Garrett moved to Tulsa, Okla."

As bearing upon the issue to be here determined, we first note one of the duties of the collector in regard to the issuance of a tax deed as set forth in Section 140.540, RSMo 1949, which section provides:

"1. Whenever the county collector shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever, invalid, he shall not convey such lands; but the purchase money and the interest thereon shall be refunded out of the county treasury to the purchaser, his representatives or assigns, on the order of the county court.

"2. Such invalid sale shall suspend for the period intervening between the date of the sale and the discovery of its invalidity the running of the statute of limitations.

"3. In such cases the county collector shall make an entry opposite to such tracts or lots in the record of certificates of purchase issued or redemption record that the same was erroneously sold, and the cause of invalidity, and such entry shall be prima facie evidence of fact therein stated. He shall notify the county clerk of such action, whose duty it shall be to make a like entry upon his sale record."

Section 13 of Article X of the Missouri Constitution provides that no real property shall be sold for taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof or the names of all owners appearing on the land tax book. Said section more fully provides as follows:

"No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall

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contain the names of all record owners thereof, or the names of all owners appearing on the land tax book, and all other information required by law."

(Emphasis ours)

Section 140.150, V.A.M.S., as amended, to conform to the requirements of the above-noted constitutional provision, provides as follows:

"1. All lands and lots on which taxes are delinquent and unpaid are subject to sale to discharge the lien for the delinquent and unpaid taxes as provided for in this chapter on the fourth Monday in August of each year.

"2. No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale contains the names of all record owners thereof, or the names of all owners appearing on the land tax book and all other information required by law. Delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor.

"3. The entry in the back tax book by the county clerk of the delinquent lands and lots constitutes a levy upon the delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

(Emphasis ours)

It is to be noted that prior to the 1945 Constitution, there was no requirement that the notice of sale of real property for delinquent taxes in a non-judicial proceeding contain the names of the record owners or the names of all owners appearing on the land tax book. In fact, such requirement was specifically negated by the following language: Revised Statutes 1939, Section 11125:

"It shall not be necessary to include the name of the owner, mortgagee, occupant or

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any other person, corporation owning or claiming an interest in or to any of said lands or lots in the notice of sale."

Thus, when the provisions of Section 13 of Article X of the Missouri Constitution and Section 140.150, V.A.M.S., requiring the notice of sale to contain the names of all record owners or the names of all owners appearing on the land tax book, are viewed in the light of its legislative history, the same become, we believe, vitally significant.

Section 140.170, V.A.M.S., provides for the publication of the notice of sale as follows:

"1. The county collector shall cause a copy of the list of delinquent lands and lots to be printed in some newspaper of general circulation published in the county, for three consecutive weeks, one insertion weekly, before the sale, the last insertion to be at least fifteen days prior to the fourth Monday in August.

"2. In addition to the names of all record owners or the names of all owners appearing on the land tax book it is only necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost due thereon, each year separately stated, and the land therein described shall be described in forty acre tracts or other legal subdivisions, and the lots shall be described by number, block, addition, etc., except that if a part or parts of any forty acre tract or other legal subdivision or lot are assessed on the tax books to two or more parties as owners thereof, then, as to such land or lots, such list shall be so prepared and separated.

"3. To the list shall be attached and in like manner printed and published a notice that so much of said lands and lots as are necessary to discharge the taxes, interest and charges which are due thereon at the time of sale will be sold at public auction at the courthouse door of such county, on the

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fourth Monday in August next thereafter, commencing at ten o'clock of said day and continuing from day to day thereafter until all are offered.

"4. The county collector on or before the day of sale, shall insert at the foot of the list on his record a copy of the notice and certify on his record immediately following the notice the name of the newspaper of the county in which the notice was printed and published and the dates of insertions thereof in the newspaper.

"5. The expense of such printing shall be paid out of the county treasury and shall not exceed the rate provided for in chapter 493, RSMo, relating to legal publications, notices and advertisements, and the cost of printing at the rate paid by the county shall be taxed as part of the costs of the sale of any land or lot contained in the list."

It is a well-recognized rule that in construing a statutory provision relating to the sale of land for delinquent taxes, such a provision must be strictly construed in favor of the owner of the land. This rule is stated in 61 C.J., Sec. 1519, page 1117, as follows:

"Sales of land for delinquent taxes being in derogation of private rights of property, the power has been said to be strictis-simi juris and statutes authorizing such sales must be strictly construed in favor of the owner of such land, or in so far as they are intended for the benefit, or the protection, of the citizen, and the scope of such statutes is never enlarged beyond their actual terms."

This rule has been recognized and applied by the appellate courts of this state. See Meriwether v. Overly, 228 Mo. 218, and Schlafly v. Baumann, 108 S.W.2d 363.

The following is contained in Cooley, Taxation 4th Edition, Vol. 3:

Sec. 1409, p. 2791—"A notice of sale, as required by statute is necessary to authorize

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a tax sale and the absence of the notice renders the sale void. This is one of the most important of all safeguards that have been deemed necessary to protect the interests of persons taxed and nothing can be substituted for it or excuse the failure to give it."

Sec. 1414, p. 2799-"Unusual care is required in obeying the directions of the statute regarding notice, or no one who is entitled to notice can be bound by a sale which has been made without it."

Bearing in mind the rule that the provisions of Article X, Section 13 of the Missouri Constitution and Section 140.150, V.A.M.S., relating to the inclusion of the name of the record owners or the names of all owners appearing on the land tax book and also in the notice of sale, are for the benefit of the owner, and further bearing in mind the fact that the name of the owner appearing on the land tax book was C. G. Garrett, we are of the opinion that a notice of sale relating to the particular property in question which contains the name C. C. Garrett, which name was not the name of the record owner at the time of such publication of notice of sale or the name appearing on the assessor's tax book, is not in compliance with the statutory and constitutional requirements and is therefore insufficient. It follows, we believe, that the sale, based upon said insufficient notice, is invalid and that under the provisions of Section 140.540, supra, the collector should not, under the facts presented, issue a deed to the certificate holder.

In considering this matter, we have not been unaware of the rule that a person possessing the right of redemption may do so even after the expiration of the statutory redemption period if the same is done prior to the execution and delivery of the deed. (See Wetmore v. Berger, 188 S.W.2d 949, 953). However, under the facts of this case as presented, we believe said rule would be inapplicable in view of the further rule that if the certificate holder has tendered his certificate with the amounts due, then thereafter an attempted redemption is unavailing. See Hobson v. Elmer et al., 163 S.W.2d 1020, 1023 [5].

CONCLUSION

Therefore, in the premises, it is the opinion of this office that a tax sale of a particular piece of property predicated

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upon a publication of notice of sale, which notice listed the name of C. C. Garrett, which name was neither the name of the record owner or the name of the owner appearing on the land tax book, both of the latter being in the name of C. G. Garrett, is invalid and that upon discovery of said defect prior to the delivery of a tax deed, the collector should refuse to issue to the certificate holder a deed.

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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