

TAX/TION: In the event of an invalid tax sale, a county would not
TAX SALE: be obligated or liable for any amounts in excess of a
COUNTIES: refund of the purchase moneys plus interest.

January 7, 1960



Hon. James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri

Dear Mr. Paul:

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

"A question has arisen relative to a tax sale held in this county in August of 1957 as to what position the county is in and to whom, if anyone, it is liable, and I would appreciate an opinion on the question herein submitted as soon as possible.

"The facts covering this situation are as follows:

(1) In 1947 the following description was conveyed out of a tract of land containing 75 acres to Minnie M. Collingsworth:

Beginning 180 feet West and 450 feet South 6 deg. from the NE corner SE 1/4 NE 1/4 of Section 34, Twp. 21, Range 33, on West line of Highway U. S. 71, thence South 6 Deg. East 100 feet, thence West 338 feet, thence North 4 deg. West 100 feet, thence East 335 feet to place of beg, containing 75/100 acre more or less.

This was carried on the assessment book as a part of the SE 1/4 NE 1/4 of Section 34, Twp. 21, Range 33, containing .75 acre.

(2) In October of 1951, Minnie M. Collingsworth conveyed to O. G. Rhoten the same

Hon. James L. Paul

description contained in paragraph (1) above and later in October of 1951, O. G. Rhoten conveyed the same description to George G. Wiley.

(3) In 1952, the Assessor continued the assessment as outlined in paragraph (1) above in the name of M. Collingsworth and picked up the complete description conveyed as fully set forth in paragraph (1) to George G. Wiley, but assessed it in Section 35, Twp. 21, Range 33.

(4) Mr. Wiley has paid the taxes assessed in his name each year thereafter but following their conveyance in 1951, Collingsworth, of course, did not pay taxes on the assessment in Section 34.

(5) In 1957, the Collector advertised for sale for delinquent taxes as follows:

'M. Collingsworth, .75 acres, Part of the SE 1/4 NE 1/4 Section 34, Twp. 21, Range 33', following thereafter the total interest, tax and costs for taxes for the years 1956, 1955, 1954, 1953 and 1952.

"On Monday, August 26, 1957, this property was purchased by a Mr. John J. Riddel and the 1957 taxes were paid by Mr. Riddel that year.

(6) In 1958, Mr. Riddel assigned his Certificate of Purchase to Mr. Perry O. Trotter and taxes for the year 1958 were paid by Mr. Trotter.

(7) On the 22nd day of September, 1959, which was more than two years after the tax sale, Mr. Trotter presented his Certificate and received a Collector's Deed.

"Now the question that presents itself is this: Obviously and without question, there

Hon. James L. Paul

has been a duplicate or dual assessment on the same property, one carried on the books in Section 34 and the other carried on the books in Section 35. The county has received taxes from both parties. Although there has not been any law suits filed, there has been a demand made by Mr. Trotter that in the event Mr. Wiley institutes a suit to set aside the Collector's Deed, that he in turn intends to sue to recover the amount paid by him to Mr. Riddel for the Certificate plus reimbursement of all taxes paid by him plus interest, the cost of obtaining an abstract of title to the property and any court costs incurred incident to any suit.

"Of course, Mr. Wiley's position is that he has paid taxes on his home which he thought had been properly assessed and intends to try to recover any costs or expenses necessary to clear this matter up.

"Please furnish an opinion covering the county's position and/or liability, if any, in this matter."

We will assume (without deciding) for the purpose of this opinion, that the tax sale referred to is "invalid." This is necessary since if the sale was a valid sale there could exist no question concerning the liability of the county.

In an opinion of this office written to Edward C. Westhouse under date of April 25, 1958, it was held that where the sale and conveyance of land for taxes was invalid because the taxes on said land had in fact been paid, the county was only liable for a refund of the money paid by the purchaser at the tax sale plus interest, citing Section 140.530, RSMo 1949. It was further held in said opinion that the county does not warrant and defend title in a suit brought by the owner of the property sold at tax sale. A copy of said opinion is enclosed herewith for your information.

We also note the general rule as set forth in 51 Am. Jur., Section 1141, page 982, to the effect that in the absence of any legislative enactment to the contrary the doctrine of caveat emptor

Hon. James L. Paul

applies against purchasers at tax sales in favor of the county or other taxing authority. In other words, insofar as the county or other taxing authority is concerned, the purchaser assumes the risk of all irregularities and illegalities in the proceedings for sale.

We have made a further study of the pertinent statutes and do not find any liability placed upon the county in the event of an invalid tax sale except as to a refund of purchase money plus interest as more fully provided under the circumstances set forth in Sections 140.530 and 140.540, RSMo 1949. (Section 140.540, RSMo 1949, would appear to be inapplicable to the circumstances which you had enumerated since it appears that said section applies only where the invalidity was discovered prior to conveyance whereas you state a conveyance has been executed.)

It would seem to us that when the legislature has undertaken to provide for certain obligations of the county in the event of an invalid sale (Sections 140.530 and 140.540, supra) that the same would have the effect of negating any further obligations or liability on the part of the county and we so hold.

CONCLUSION

Therefore, in the premises, we are of the opinion that under the facts which you have outlined, the liability of the county would extend only to a possible refund of purchase money plus interest under the provisions of Section 140.530, RSMo 1949, and that in no event would the county as such be obligated or responsible in any further or greater amount than is provided for in said section.

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

Yours very truly,

JOHN M. DALTON
Attorney General

DDG/mlw
Enclosure