

TAXATION:

**SALL FOR TAXES EXTINGUISHES
ALL PRIOR LIENS:**

Deed issued by Collector for lands sold for delinquent taxes supersedes and extinguishes lien of a deed of trust which was on such lands prior to such sale.

September 1, 1938

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Dear Sir:

This is in reply to yours on the question of whether or not the lien of a deed of trust on real estate is superseded and extinguished by a deed issued by the Collector of Revenue for lands which are sold for taxes by authority of the provisions of the Jones-Munger Law, Laws of Missouri, 1933, page 425.

Because of the fact that a mortgagee or trustee of a deed of trust on lands which are sold for taxes is not included in the notice of sale of such lands, your question is whether or not such mortgagee or trustee is deprived of his constitutional rights of due process by the provisions of the Jones-Munger Act.

The section of the Constitution which pertains to the due process of law is Section 30, Article II, which provides as follows:

"That no person shall be deprived of life, liberty or property without due process of law."

Section 9747, R. S. Mo. 1929, provides in part as follows:

" * * * real property shall in all cases be liable for the taxes thereon, and a lien is hereby vested in favor of the state in all real property for all taxes thereon, which lien shall

be enforced as hereinafter provided in this chapter; said lien shall continue and be in force until all taxes, forfeitures, back taxes and costs shall be fully paid or the land sold or released, as provided in this chapter."

Section 9952a, Laws of Missouri, 1933, page 430, provides as follows:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale; provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor. The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

By this section it will be noted that in the notice of sale of lands for delinquent taxes it is not necessary for the collector to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of the lands which are so sold.

The lien for state taxes is prior to any liens which may be on real estate at the time such taxes are due. In the case of Commerce Trust Co. v. Syndicate Lot Co., 235 S. W. 150, 152, the court in speaking of such lien, said:

"The statute gives the state a lien for all taxes, which shall continue and be enforced until they are fully paid or the land sold therefor."

The mortgagee, as well as the person who has the record title to such land, must take notice of the provisions of Section 9747, supra, and Section 9952a, supra. While Section 9952a does not require the collector to list the owner, mortgagee, etc., in the notice of delinquent lands, and we do not find where this statute has been attacked on that ground, yet we do find that the Missouri courts have passed on a question similar to this in some drainage district cases, in which it was held that the owners of the lands were not deprived of their lands without due process because they were not named in the publication of such proceedings.

In the case of State ex rel. v. Blair, 245 Mo. 680, l. c. 695-6, the court said:

"When a statute has required notice to be given in a certain form to absent land owners, such statute has almost universally been held to constitute due process of law.

"Huling v. Kaw Valley Railway and Improvement Company, 130 U. S. 559, was a suit under a statute of Kansas governing the condemnation and appropriation of lands for railroad purposes. That statute did not provide that the notice to absent land owners should designate them by name, but only required that such notice should give the numbers of the sections, townships and ranges through which the railroad would be constructed. The Supreme Court of the United States, in upholding the constitutionality of the above mentioned statute, said:

"The owner of real estate, who is a non-resident of the State within which the

property lies, cannot evade the duties and obligations which the law imposes upon him in regard to such property, by his absence from the State. Because he cannot be reached by some process of the courts of the State, which, of course, have no efficacy beyond their own borders, he cannot therefore hold his property exempt from the liabilities, duties, and obligations which the State has a right to impose upon such property; and in such cases some substituted form of notice has always been held to be a sufficient warning to the owner, of the proceedings which are being taken under the authority of the State to subject his property to those demands and obligations. Otherwise, the burdens of taxation, and the liability of such property to be taken under the power of eminent domain, would be useless in regard to a very large amount of property in every State of the Union. It is, therefore, the duty of the owner of real estate, who is a non-resident, to take measures that in some way he shall be represented when his property is called into requisition; and if he fails to do this, and fails to get notice by the ordinary publications which have usually been required in such cases, it is his misfortune, and he must abide the consequences. Such publication is "due process of law" as applied to this class of cases."

The Supreme Court of Missouri in discussing the Blair case, supra, in the case of Troeger v. Roberts, 284 Mo. 363, 1. c. 370, said:

"In the case of State ex rel. Coleman v. Blair, recently decided by this court (245 Mo. 680), it was held not necessary in the notice to landowners of the assessment of benefits and awarding of damages arising out of the construction of a proposed drainage ditch to designate every

person appearing by the deed records to own lands within the district. The names to be inserted in the aforesaid notice are usually obtained by the viewers while inspecting and locating the right of way for the ditch, and such notice should, in addition to the names returned by the viewers, also designate generally all other persons whose lands will be affected by the proposed improvements. Such notice, when duly published, is due process of law."

In the case of Barnes v. Construction Co., 257 Mo. l. c. 193-194, the court said:

"First, it is contended that the county court acquired no jurisdiction over the owners of a certain tract of land in the drainage district reported by the viewers as belonging to one D. W. Hutson, because said Hutson was dead long prior to the filing of the petition to organize the drainage district. Granting that a suit begun and prosecuted against a dead man is void as to him, yet under the facts hereinafter recited we think appellants' contention is unsound. The defendants have introduced deeds establishing the fact that the title of D. W. Hutson in and to lands in the drainage district was divested out of him during his lifetime, and invested in other parties, some of them plaintiffs in this action. The notice issued to landowners on July 3, 1911, by the county clerk of Platte county was directed to some of the plaintiffs in this action and generally to all other persons owning lands to be affected by the proposed drainage ditch. That notice complied with section 5587, Revised Statutes 1909, and was sufficient to give the court jurisdiction over each and every person owning lands within the drainage district, and the appellants, who were then part owners of the D. W. Hutson lands, were

accorded every opportunity required by law to appear in the county court and resist the judgment condemning the right of way for the proposed ditch.

"In the case of State ex rel. Coleman v. Blair, recently decided by this court (245 Mo. 680), it was held not necessary in the notice to landowners of the assessment of benefits and awarding of damages arising out of the construction of a proposed drainage ditch to designate every person appearing by the deed records to own lands within the district. The names to be inserted in the aforesaid notice are usually obtained by the viewers while inspecting and locating the right of way for the ditch, and such notice should, in addition to the names returned by the viewers, also designate generally all other persons whose lands will be affected by the proposed improvements. Such notice, when duly published, is due process of law. (State ex rel. Coleman v. Blair, 245 Mo. 1. c. 696-7, and cases there cited.)"

Section 9956a, Laws of Missouri, 1933, page 437, provides as follows:

"The owner or occupant of any land or lot sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner:
* * * *"

By this section the lawmakers have given the person interested in the land two years in which to redeem it after it has been sold for taxes. This section gives the mortgagee or his assignees ample time to redeem the property if they wish to exercise that right.

We fail to find where the courts have given the mortgagees or trustees of deeds of trust any more rights than the person holding title to the land has under the

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statutes pertaining to notice of sale of such land. The mortgagee and/or his assignees must take notice that the lands are subject to taxation and that the taxes are a lien which is prior to that of the mortgage.

CONCLUSION

From the foregoing, it is the opinion of this department that the lien of a deed of trust on real estate is superseded and extinguished by a deed issued by the collector for lands sold for taxes by authority of the provisions of the Jones-Munger Law (Laws of Missouri, 1933, page 425), even though the mortgagee and/or his assigns or the trustee of such mortgage does not have notice of the sale of such lands for taxes.

Respectfully submitted

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APPROVED:

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