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TAXATION: Construction of Classes One, Two and Three of Sec. 183, R. S. Mo. '29 - the sale of tax certificates and the delivery of collector's deed is not affected by the administration of estates.

November 26, 1940



Hon. George O. Dalton
Collector
Marion County
Hannibal, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of November 19, 1940, which reads as follows:

"Will you please advise me as to the following matter? There are two instances in this County where the real estate owner died, and his estate was being administered in the Probate Court, this being all of his assets. The funeral director presented his bill for allowance and payment in the Probate Court, and while the estate was being administered, the tax certificate in the meantime had been issued and ripened into title and the Collector's deed was issued on the same, which of course, excluded the undertaker from the payment of his debt against the estate.

"Now, does the fact that the estate is being administered and a claim to be allowed by the Court, should this prevent the sale for delinquent taxes or the issuing of a Collector's deed upon a certificate which has become title.

"I also understand that the undertaker's claim has priority over the State's claim for taxes."

We call your attention to Article 10, Sections 6 and 7, of the Constitution of Missouri, which read as follows:

"Sec. 6. Property exempt from taxation. The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

"Sec. 7. Other exemptions void. - All laws exempting property from taxation, other than the property above enumerated, shall be void."

From the reading of these two sections, it will be noted that the Constitution plainly sets forth the only lands in the State of Missouri that are exempt from taxation.

Section 139 R. S. Missouri, 1929, provides as follows:

"If any person die leaving land encumbered by mortgage or deed of trust, or any lien whatever, or owning any equity of redemption, or leaving mortgaged or pledged any personal property, and shall not have devised the same or provided for redemption thereof by will, the court shall have power, if, in its judgment, it will promote the interest of the estate and not be prejudicial to creditors, to order the executor or administrator to redeem the same out of the personal assets of the estate, or to order the sale of other real estate to redeem such land or personal property so encumbered, and also to order the executor or administrator to mortgage or pledge any personal property of the estate in his hands for the purpose of raising and providing the money with which to redeem said premises so encumbered."

It will be noted in the above section that if any person dies, leaving land encumbered by mortgage or deed of trust, or any lien whatever, or owning any equity of redemption . . . the court shall have power, if, in its judgment, it will promote the interest of the estate and not be prejudicial to creditors, to order the executor or administrator to redeem the same out of the personal assets of the estate, . . . Clearly this Section gives the probate court the authority to order the executor, or administrator, to redeem, if there is a proper showing made to the court by any person interested or who has a claim before the court.

Section 306 R. S. Missouri, 1929, provides in part as follows:

"When any person having title to any real estate of inheritance, or personal estate undisposed of, or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary, to his kindred, male and female, subject to the payment of his debts and the widow's dower, in the following course: * * "

It is clearly the intention, and has been many times held, that real estate, upon the death of the owner, passes immediately by operation of law to his, or her, heirs, or, in case of a will, would pass according to the terms and tenor of the will, whereas, personal property passes to the deceased' legal representative, subject, in each case, to the payment of the deceased' debts. (Armor v. Lewis, 252 Mo. 568.)

Section 182 R. S. Missouri, 1929, provides in part as follows:

"All demands against the estate of any deceased person shall be divided into the following classes:

I. Funeral expenses.

II. Expenses of the last sickness, wages of servants and demands for medicine and medical attendance during the last sickness of deceased; also reasonable cost of tombstone if allowed by court.

III. All debts, including taxes due the state or any county or incorporated city or town; and it shall be

the duty of the executor or administrator to pay all such taxes without any demand therefor being presented to the court for allowance: Provided, that no executor or administrator shall pay any taxes on the real estate of the deceased that are not a charge against the same at the death of the deceased, except where he is in possession of the realty under an order of the court. * * "

Therefore, from the reading of the aforesaid sections, the conclusion is obvious that the persons deceased, whom you described in your request, were the owners of land which was subject to be taxed by the State of Missouri, and those taxes having been levied, and not having been paid, the liens created by the assessment of the taxes were by law perfected through statutory tax sale and tax certificates sold in compliance therewith; and, even though during the interim of the time that the title was ripening the owners became deceased and their estates were administered upon, the executor, (or administrator - as the case may be), could have been ordered by the probate court to have redeemed the equity of redemption that was held by the deceased during his, or her, lifetime; but, due to the fact that the title of the land, or, in the instant case, the equity of redemption, passed to the heirs of the deceased by operation of law, then the only persons who could redeem would be the heirs, except, however, upon an order being procured from the judge of the probate court, as is provided in Section 139, supra, and the land thereby redeemed by the executor or administrator in compliance with the order, but apparently this was not done, and the equity of redemption was allowed to ripen into a title and the purchasers of the several certificates were allowed to procure deeds from the collector of the county wherein the land was sold, which, if the sales and all things were properly done, under the Jones-Munger Act the

holders of the deeds have the fee simple titles. Therefore, the heirs of the deceased ceased to have an equity of redemption, and the probate court having failed to make an order upon the administrator or executor to redeem these lands the undertaker, (referred to in your request), is now precluded from receiving any benefits, even though it might have been possible to have worked out something for him, if the procedure outlined heretofore had been followed.

Section 182, supra, (even though the funeral expenses are set out and classified in Class One, and the taxes classified in Class Three,) does not give him any particular pecuniary right, and it will be noted in Class Three that it provides that no executor or administrator shall pay any taxes on the real estate of the deceased that are not a charge against the same at the death of the deceased, except, where he is in possession of the realty under an order of court. In other words, there is no duty upon the administrator to pay the taxes on real estate or to redeem any land that is in the process of being sold for taxes. (See Graham v. Wilson, 185 S. W. 1160).

CONCLUSION.

In conclusion, it is our opinion that even though valid undertaker's claim had been allowed in the probate court, that this in itself does not prevent the sale for delinquent taxes, or the issuing of a collector's deed upon a certificate which has become title.

Respectfully submitted,

APPROVED:

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