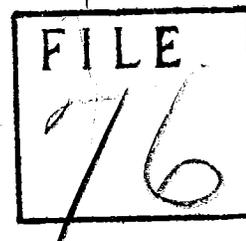


TAXATION: Surplus from tax sale should be paid to persons entitled thereto. In case of doubt or dispute of such surplus, the collector should pay the same into the county treasury for the use and benefit of such person or persons.

2/26
November 10, 1941

Hon. Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri:



Dear Mr. Robertson:

This is an acknowledgement of your request for an opinion relating to the Jones-Munger law on November 5, 1941, which is as follows:

"The question has arisen in this county as to the matter of delinquent tax sales, as to who should pay the taxes that have accrued for the current year, where there is a surplus left from the third-year sale? The instance I have in mind, the property was advertised on the 2, 9th and 16th days of October. The amount of taxes that were advertised due was \$162.22, and the current 1941 tax is \$23.20. The property actually brought \$335.00. The purchaser insists that the 1941 taxes should be paid out of the surplus from the sale. Our Collector would like to know just what disposition should be made of the surplus."

Section 11109 R.S. Mo. 1939 is as follows:

"The taxes due and unpaid on any real estate which has heretofore been returned delinquent, and which has not been forfeited to the state, and the taxes due and unpaid on any real estate which has been forfeited to the state for the nonpayment of such taxes, shall be deemed and held to be back taxes, and the lien heretofore created in favor of the state of Missouri is hereby retained on each such tracts and lots of real estate to the amount of the taxes due thereon, and also the interest and costs accruing under this chapter."

Section 11132 thereunder is in part as follows:

"Where such sale is made, the purchaser at such sale shall immediately pay the amount of his bid to the collector, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises as to the proper person, the same shall be paid into the county treasury to be held for the use and benefit of the person entitled thereto."

Section 11133 thereunder is in part as follows:

"* * * If the purchaser bid for any tract or lot of land a sum in excess of the delinquent tax, penalty, interest and costs for which said tract or lot of land was sold, such excess sum shall also be noted in the certificate of purchase, in a separate column to be provided therefor." * * *

The back tax lien in favor of the state, which is provided in section 11109 supra, is a lien against realty and must be enforced under the provisions of what is commonly known as the Jones-Munger law, which provides for the foreclosure of such lien by summary action.

The surplus in such foreclosure proceedings must, under the provision of section 11132 supra, be paid to the person entitled thereto; or if the collector has doubt, or a dispute arises as to the proper person, he shall pay the same into the county treasury to be held for the use and benefit of the person entitled thereto.

In the case of Holly v. Rolwing 230 Mo. App. 33, a controversy arose as to who was entitled to a surplus in the hands of the sheriff. A drainage and levee district claimed the surplus as junior lienors. The sheriff filed a suit in the nature of interpleader asking the court to determine to whom such surplus should be paid.

On page 38 of said decision the court said:

"The appellants have divided their brief into several heads, but really there is only one point before us for consideration, and that is, who, under the facts agreed on, is entitled to this surplus fund? The districts contend that the surplus should be considered as realty, and that their liens which they admittedly had upon the land, should be construed by the courts to be upon the surplus.

"There is no question here as to the proper organization of the two districts, nor is there any contention but that the liens of the two districts were subject to and inferior to the lien for the State and county taxes."

On page 42 thereto the court held:

"As we read the statute with reference to collection of delinquent levee taxes we find no provision that would authorize such an action as herein brought that would establish a lien upon the surplus money left after a sale by the State for the collection of general taxes. Nor do we find any authority by the courts of this State that would authorize our so holding.

"Since there is no provision in the statute giving the drainage or levee districts the right to follow the surplus derived from a sale under a procedure to collect general taxes, and since the statutes do give to drainage and levee districts sufficient methods of procedure to protect their interest, if followed, it is our conclusion that the finding of the trial court was proper, and that this judgment should be affirmed."

Hon. Marion Robertson

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November 10, 1941

Therefore, it is our opinion that a surplus arising from a sale of lands for the payment of delinquent taxes for certain years cannot be held for the payment of taxes for subsequent years but that such a surplus must be paid to the person entitled thereto by reason of ownership of some interest in and to such realty; or if the collector has doubt as to who is entitled thereto or a dispute arises as to the proper person, the same shall be paid into the county treasury to be held for the use and benefit of the person or persons entitled thereto.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

SVW/aw

APPROVED:

Vane C. Thurlo

(acting) Attorney General