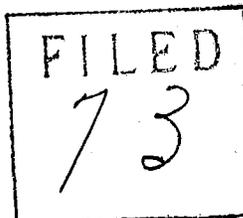


21 Smith
- TAXATION AND REVENUE:

Construction of Art. X, Sec. 13, Constitution of 1945 with respect to publication of notice of sale of real property for delinquent tax in the year 1945.



October 19, 1945

10/31

Honorable W. Oliver Rasch
Prosecuting Attorney
Festus, Missouri

Dear Sir:

Reference is made to your letter of October 16, 1945, requesting an official opinion of this office, and reading as follows:

"The County Court of this County has requested that I obtain your opinion in regard to the printing and publishing of lists of delinquent lands.

"The Collector of this County has caused such list of delinquent lands to be published in accordance with provisions of Section 11126 R. S. Mo. 1939.

"Is such a publication or notice sufficient or is it necessary that the publication or notice also meet the requirements of Article X, Section 13 of the New Constitution?"

Section 11126, R. S. Mo. 1939, which you have referred to in your letter of inquiry, reads, in part, as follows:

" * * * And it shall only be 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 subdivision, and the lots shall be described by number, block, addition, etc.: Provided, however, that if a part or parts of any forty-acre tract or other legal subdivision or lot is 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. * * *

In addition to the above statute, we further direct your attention to the following portion of Section 11125, R. S. Mo. 1939, reading 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: * * *"

Article X, Section 13, of the Constitution of 1945 provides as follows:

"No real property shall be sold for state, county or city 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, and all other information required by law."

Examination of the portions of Sections 11126 and 11125, R. S. Mo. 1939, quoted supra, and article X, Section 13, of the Constitution of 1945, also quoted supra, discloses that, under the applicable constitutional provisions, in the future, absent

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judicial proceedings, the notice of sale must contain the names of all record owners of the real property sought to be sold, or the names of all owners appearing on the land tax book, and that such is not required under the existing statutes. It is apparent that the statutory provisions are inconsistent with the constitutional provisions mentioned.

In the premises, we direct your attention to Section 2 of the Schedule appended to the Constitution of 1945, which reads, in part, as follows:

"* * * All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Inspection of the record of laws enacted by the current session of the General Assembly discloses that at this time no repeal or amendment of Sections 11126 and 11125, R. S. Mo. 1939, has been effected. Such being the case, the provisions of such Sections 11126 and 11125 will be kept in effect, under the quoted provision of Section 2 of the Schedule appended to the Constitution, for the period of time provided therein, and publications conformable thereto will be valid.

CONCLUSION

In the premises, we are of the opinion that publication of notice of sale of real property for delinquent state, county, and city taxes will be valid in the year 1945 if such publication conforms to the requirements of Sections 11126 and 11125, R. S. Mo. 1939, and that the provisions of Article X, Section 13, of the Constitution of 1945 are inapplicable to such publications made in the year 1945.

Respectfully submitted,

APPROVED:

WILL F. BERRY, Jr.
Assistant Attorney General

J. E. TAYLOR
Attorney General

WFB:HR