

COUNTY OFFICERS:
TAX SALES:

A county officer may purchase at a tax sale unless he is charged with conducting the sale. Such an ineligible officer may not purchase, indirectly, through a relative or other person what he may not purchase directly. When a spouse of an ineligible officer purchases, the ineligible officer has an interest in the property and the sale is void. Other relatives of such officers may purchase at such sales, in the absence of fraud, collusion or interest in or for the purpose of transferring to the ineligible officer.

August 3, 1959

Honorable John Hosmer
Prosecuting Attorney
Webster County
Marshfield, Missouri



Dear Mr. Hosmer:

On July 10, 1959, we wrote to you answering an inquiry posed by you as requested by your county collector, Mr. Glenn H. Ventling, as to whether publication costs of tax sales were to be prorated according to the lands sold. At that time we reserved answer to your second question pending further study of all factors involved. This question reads as follows:

"2. It was my understanding at our collectors meeting that no county officer is allowed to bid on property at a tax sale. To what extent does this include said officer's wife or other relative? And what should my position be if such individual does bid at said sale? I have had inquiries which cause me to need an answer to the above."

Our understanding of the Missouri law applicable to tax sales is that there is no statutory prohibition, as such, against county officers bidding at tax sales. In the absence of collusion, fraud or unfair advantage being taken by a county officer or officers they may bid at tax sales. There is, however, a common law prohibition imposed by the courts against county officers, as such, being both seller and buyer, i. e., those officers active in the conduct of the sale buying the property themselves.

In *Walcott v. Hand*, 122 Mo. 621, 27 S.W. 331, 1. c. 333, our Court, in speaking of the collector who did not at that

Honorable John Hosmer

time conduct the sale, phrased this prohibition in the following language:

"The learned counsel for plaintiffs urges, with great earnestness, that the tax deed by the sheriff to the tax collector, Million, is void because it is against public policy to permit a tax collector to purchase at an execution sale under a judgment obtained by him for taxes. Counsel correctly assumes that a public officer charged with the duty of selling property for the best price cannot himself become the purchaser, and that a sale made by an agent or trustee to himself will not be sustained by the courts. These salutary and fundamental principles are not controverted by counsel for defendant, but he insists that both reason and the authorities distinguish between a sale by a tax collector to himself and a sale to him by a sheriff made under a judgment and execution of the circuit court; that, after the execution came to the hands of the sheriff, the sheriff, and not the collector, was charged with its execution and the responsibility attending the sale. It will be observed that counsel present the naked proposition that a purchase by the collector at the sheriff's sale is void. No collusion or conspiracy is charged, no suggestion is made of unfairness or irregularity in the time or manner of sale, or inadequacy of the bid. A careful examination of each and every case cited by plaintiffs, discloses that in every instance in which the sale was held void or voidable it was under a tax law in which the collector himself made the sale, and either by himself or deputy purchased the land, or, if sold by a sheriff or constable, he purchased at his own

Honorable John Hosmer

sale. The great underlying principle in all of these cases is that the duty of the seller is inconsistent with the interest of the purchaser, and when there is such a conflict the temptation is too great to subordinate the former to the latter, and public policy forbids the transaction; but under the tax law of 1877, and subsequent amendments, sales of lands for taxes in Missouri are made under judgments of the circuit courts, and executions issued thereon to the sheriffs as under other judgments. The sheriff, and not the collector, is charged by law with the execution of the process. He advertises and conducts the sale, and the collector has no control of the process, other than to stop the sale if the owner shall pay the taxes and costs. The cases cited from other jurisdictions whose proceedings were wholly unlike ours throw no light upon the subject further than to illustrate the general principle that an agent cannot be both seller and buyer. * * *

Chapter 140, Sections 140.010 through 140.720, RSMo 1949, colloquially known as the Jones Munger Law, regulates the sale of land for delinquent taxes. Section 140.190, RSMo, provides that the county collector is to conduct the selling of lands sold for delinquent taxes. Accordingly, the collector in such instance is in the position of a "seller;" he could not, therefore, be a purchaser also. We quote Section 140.190, RSMo, in part:

"1. On the day mentioned in the notice, the county collector shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed or belonging to each person assessed, shall be sold as will pay the taxes, interest and charges thereon, or chargeable to such person

Honorable John Hosmer

in said county. * * *

For your information on this point we are enclosing our opinion of November 30, 1937, to the Honorable G. Logan Marr, which holds that collectors or their deputies are prohibited from purchasing land sold for delinquent taxes.

As to relatives of an officer prohibited by law from purchasing, who bid or purchase at a tax sale, the cardinal rule is that a disqualified person is precluded from purchasing indirectly what he is denied the right, by law, to purchase himself. The law may not be circumvented by the simple expedient of having someone else purchase it for him.

In 85 C.J.S., Taxation, Section 809(j), page 143, the rule is stated as follows:

"A person will not be allowed to acquire a valid title to land sold at a tax sale by procuring another person to figure as the ostensible purchaser at the sale and then taking an assignment of the certificate or a deed from such person on refunding him the money expended when such person is legally or morally obligated to pay the taxes or disqualified by reason of his duty to the owner, or his relation to the title, or his character as a public officer, as discussed supra subdivision i of this section. Likewise, such person may not acquire a valid title by purchasing the property from a third person or stranger, who purchased it at the tax sale, even after expiration of the period of redemption.
* * * * (Emphasis ours)

This rule is followed in Missouri. In Shotwell v. Munroe, 42 Mo. App. 669, l. c. 678, 679, it is stated:

"The statute provides (R.S. 1879, sec. 2387; R.S. 1889, sec 4949): 'No officer to whom any execution shall be directed, or any of his deputies, or any person for them, shall purchase

Honorable John Hosmer

any goods or chattels, real estate or other effects, or bid at any sale made by virtue of such execution, and all purchases so made shall be void.' This provision is reiterated in the act relating to justices (R.S. 1879, sec. 3021; R.S. 1889, sec. 6309), where the words used are absolutely void. These provisions are merely declaratory of the common law, resting on the soundest principles of public policy, which prohibit any trustee from becoming directly or indirectly interested in a sale made by him. * * * " (Emphasis ours).

It is apparent that such an officer may not secure an agent or family member to purchase for him at a tax sale, but there remains a question of a family member purchasing at a public tax sale, not for the purpose of transferring the property to the ineligible officer but for the purpose of retaining the property themselves. This is a state sponsored sale to raise tax revenue when other means of collection fail. The state provides rigid rules of procedure as to the conduct of such sales, i.e., publication, etc., which must be strictly met. It has imposed no prohibition, by statute, on relatives of such officers bidding, but the law looks with close scrutiny on such purchases, not in that the purchaser is ineligible but from the standpoint of an ineligible officer having an interest by their relatives' purchase.

With purchases by spouses of ineligible officers the scrutiny is particularly close, and the general rule seems to be that they may not purchase at tax sales unless there is a clear showing that the property is clearly free of community of ownership with the ineligible officer spouse. Where a spouse purchases at a public tax sale, it has been held that the spouse's purchase is valid. See Means v. Haley, 84 Miss. 550, 36 So. 257, 86 Miss. 557, 38 So. 506, 1. c. 38 So. 507, wherein the court states:

"Nor do we think a sale for taxes, legally made, is invalidated simply because the purchaser is the wife of the tax collector who conducts the sale - especially when there is neither averment nor proof of

Honorable John Hosmer

irregularity or actual fraud. Husband and wife are separate in property, and may invest their money according to the dictates of their individual judgments."

Where a state has enacted provisions granting marital rights as broad as are contained in the Missouri Probate Code, it is doubtful that the spouse can't be said to have an interest in the property purchased by his spouse. As an example of this contention we quote, in part, our so-called forced share statute, Section 474.160, RSMo Cum. Supp. 1957:

"1. When a married person dies testate as to any part of his estate, a right of election is given to the surviving spouse solely under the limitations and conditions herein stated:

"(1) The surviving spouse, upon election to take against the will, shall receive in addition to exempt property and the allowance under section 474.260 one-half of the estate, subject to the payment of claims, if there are no lineal descendants of the testator; or, if there are lineal descendants of the testator, the surviving spouse shall receive one-third of the estate, subject to the payment of claims; "

The conclusions expressed relating to ineligibility of a spouse to purchase was the view taken by our Supreme Court in Githens v. Butler County, 350 Mo. 295, 165 S.W. 2d 650, l. c. 652, 653:

"The cases cited in the preceding paragraphs deal with instances of an official being 'directly' interested in the contracts, actions or dealings with the public body of which he was a member. Here the question is whether the public official is so 'indirectly' interested as a party to a transaction with a county court of which he was a member as to invalidate it. In fact the

Honorable John Hosmer

question is whether the relationship of husband and wife is a disqualifying interest within the meaning of the statute and common law prohibition against an official's becoming indirectly interested in a public contract. The two opposing lines of cases are collected in the following: Thompson v. School Dist. No. 1, 252 Mich. 629, 233 N.W. 439, 74 A.L.R. 792; O'Neill v. Auburn, 76 Wash. 207, 135 P.1000, 50 L.R.A., N.S., 1140; 6 Williston, Contracts, p. 4898.

"[4] An indirect interest may be so remote as to not avoid a bargain between an official and the public body he represents, consequently when the interest is not direct there is more reason for considering each case on its special facts. 6 Williston, Contracts, § 1735; Thompson v. School Dist. No. 1, 252 Mich. 629, 233 N.W. 439, 74 A.L.R. 790.

"[5-7] Here the respondent urges that she purchased the land in question with her own separate funds and that under our statute her husband cannot interfere with her separate real property. § 3390, R.S.Mo. 1939, Mo.R.S.A. § 3390. But the husband is under a duty to and is liable for his wife's support (Nielsen v. Richards, 75 Cal.App. 680, 243 P.697) and in this state he is entitled to dower in his wife's real estate, Mo.R.S.A. §§ 319, 324, either of which are pecuniary interests and disqualifying under statutes requiring such an interest even though it is indirect. Nuckels v. Lyle, 8 Idaho 589, 70 P.401; Beakley v. City of Bremerton, 5 Wash.2d 670, 105 P. 2d 40. Though the husband may have no present interest in his wife's separate estate there can be no question but that because of the relationship he does have such a beneficial interest in her property and affairs as to be 'indirectly' interested in any contract to which she is a party. Clark v. Utah Con-

Honorable John Hosmer

struction Co., 51 Idaho 587, 8 P.2d 454. But aside from these pecuniary reasons it is obvious, it seems to us, that a county judge's wife may not purchase real estate from the county and court of which her husband is a member acting in a quasi-judicial capacity. Though the bargain may be ever so fair it places the officer in a position which might become antagonistic to his public duty. Throop, Public Officers, § 607; 22 R.C.L., § 121; Goodyear v. Brown, 155 Pa. 514, 26 A. 365, 20 L.R.A. 838, 35 Am.St.Rep. 903. Under most circumstances, if not all, it is simply against public policy for the wife of a county judge to purchase land from a county when the sale requires the vote and opinion of her husband as a member of the court passing on the transaction. Clark v. Utah Construction Co., supra; Sturr v. Elmer, 75 N.J.L. 443, 67 A. 1059."

A child, on the other hand, may be completely disinherited. Children may purchase property at such a sale, retaining the property for their own use and enjoyment or for their own family, i.e., to own separately from the ineligible officer parent. Providing that a child of the ineligible officer purchases at a sale meeting the legal requirements for a tax sale, and absent collusion or fraud in connection with that sale or, of course, a transfer of interest to the ineligible parent, we can find nothing either by statute or court decision to indicate that such a purchase would not be valid.

CONCLUSION

Therefore, it is the conclusion of this office that in the absence of collusion or fraud in the conduct of a tax sale, county officers may bid or purchase at a sale if they are not charged with the duty of conducting the tax sale. Such an ineligible officer may not purchase at a tax sale, indirectly, by procuring someone else to bid and purchase the property for him. A spouse of the ineligible officer may not purchase and retain property at tax sales in their own name, as it does not avoid the prohibition of the ineligible officer having an interest in the property. Other family members, in the absence of fraud or collusion, may purchase at tax sales so long as it is not

Honorable John Hosmer

purchased for or re-transferred to the ineligible county officer.

The foregoing opinion, which I hereby approve, was prepared by my assistant, J. B. Burton.

Very truly yours,

John M. Dalton
Attorney General

JBB:lc

1 enclosure