

TAXATION AND: Lands sold by collector for delinquent taxes  
REVENUE : on real estate and purchased by him consti-  
tutes a void sale. A transfer of his rights  
obtained by such certificate would convey  
nothing. The money paid by such collector  
at such sale constitutes a voluntary payment.

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December 14, 1939.

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Mr. Joseph Hatcher  
County Collector  
Audrain County  
Mexico, Missouri

Dear Mr. Hatcher:

We desire to acknowledge your request for an opinion relating to the Jones-Munger law, on December 11, 1939, which is as follows:

"I have a very peculiar situation which is as follows:

"In November, 1937, Mr. F. Edwin Pollard then County Collector of Audrain County, bought at a tax sale which he conducted himself, a piece of property, a farm of forty acres, belonging to one Addie Worsham. Before the two year redemption period was up, Mr. Theo Barnes acting agent for Mr. A. W. Worsham of the State of Texas, obtained an assignment of this certificate of purchase from F. Edwin Pollard. At the time of the assignment, Pollard was not Collector. In the meantime Mr. Worsham mailed me a check which I held for quite some time, to redeem this place and I held this check pending the out come of the assignment. Mr. Barnes presented the certificate to this

office for a deed to be made out to A. W. Worsham. Upon information from the State regarding the buying of property by a Collector, I refused to give Mr. Worsham a deed. Mr. Worsham thru his agent, paid \$140.00 for the assignment, this amount being thirty dollars more than the sale price and subsequent taxes.

"The questions arising from this; Am I, as Collector, within my rights refusing to deed this property? Has Mr. Theo Barnes, as agent of Mr. A. W. Worsham, any recourse on Edwin Pollard for the amount paid him or will Mr. Worsham lose the cost of the assignment? If I should deed this property, what would be the complications that might arise later regarding legal ownership. Mr. Theo Barnes seems to be responsible and stands to lose on the exchange. All he wants is to clear the responsibility he is now under.

"I would appreciate it very much for any information regarding the above case."

In an opinion rendered by this department to Honorable G. Logan Marr, Prosecuting Attorney of Versailles, Missouri on November 30, 1937, a copy of which is enclosed herein, it was held that the collector did not have a legal right to purchase land sold for delinquent taxes under the provisions of Senate Bill No. 94, Laws of Missouri 1933 and quoted a statute which indicates that such sale shall be void.

The collector purchasing at such void tax sale could convey by the transfer of his certificate no better interest or title than he received by such convey-

ance. Therefore the transfer of the certificate being void, there would be no statutory interest from which the owner or party in interest should redeem. Neither should a deed be made by a subsequent collector in December 1939 or thereafter to the assignee of such certificate even though he offers to meet the other requirements of said Senate Bill No. 94.

In construing the rights of the grantee of a grantor, who had received a tax deed which was void, the court in Childers v. Schantz, 120 Mo. 305, 313 held:

"The old sheriff's deed to Crockett, based upon the judgment in the tax suit against Godsey and Nichols, conveyed no title, because Nichols never had any interest in the land, and because Godsey was dead when the suit was commenced. Graves v. Ewart, 99 Mo. 17. And it follows that the quit claim deed from Crockett to Norman conveyed nothing".

In an opinion by this department to Mr. Will Hargus, Prosecuting Attorney of Harrisonville on March 3, 1934, the question of voluntary payment of taxes was discussed and held not recoverable by the payer.

Further considering the question of a voluntary payment, in regard to a mistake of law, the court, in the case of Hethcock vs. Crawford County, 200 Mo. 170, 176, held:

"Plaintiff's learned counsel argues the mistake was one of fact. He argues, moreover, that the trial court found it was a mistake of fact and that we are bound by that finding. If there was evidence sustaining

that finding, plaintiff's contentions are sound. But we find no such evidence. What facts did plaintiff mistake? Plaintiff's learned counsel puts his finger on none. Did he keep an account of these commissions and by inadvertence fail to transcribe them into his statements or settlements? No. Did he charge these commissions in some settlements and omit them, by slip, out of others. No. Did some clerk or deputy make these statements and settlements and neglect a duty assigned to him by plaintiff to put such commissions into his settlements? No. What mistake of fact, then, did plaintiff make? None that we can see. To the contrary, his mistake was of law, pure and simple; and ignorance of the law excuses no man.

"The question, then, comes to this? Having without duress, misrepresentation, or any form of imposition or fraud on the part of defendant's agent, the county court, voluntarily paid his money into the county treasury on the theory it was tax money and belonged to the county treasury - that he had but rendered unto Caesar the things that were Caesar's - can he recover it back, or must he abide the event? Courts have been extremely lenient in seeing a mistake of fact, as distinguished from a mistake of law, but plaintiff has produced no case on all-fours with this one. To the contrary, there is a live line of controlling decisions holding that under such a record, the mistake is not a fact but of law, and that money so paid voluntarily cannot be recovered back. \* \* \* "

Mr. Joseph Hatcher

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December 14, 1939.

CONCLUSION

Therefore, it is the opinion of this department that the sale of lands for delinquent taxes on real estate by the collector under the provisions of Senate Bill No. 94, Laws of Missouri 1933, and purchased by such collector, is void. That his assignment of a certificate of purchase procured at such sale conveyed no interest or title in and to the land and that the money paid by him, at such sale, for the certificate was a voluntary payment. That it is the duty of the subsequent collector to apply such sum as payment on the delinquent taxes assessed and levied against the land and offer the same for sale for the balance due.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney-General

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