

TAXATION AND: Lands purchased by a trustee appointed under
REVENUE : Section 9953b are held by such trustee for the
sole purpose designated by said statute and
does not affect paramount or Junior tax liens
assessed and levied for years subsequent to
the years for which the land was sold to such
trustee.

February 16, 1940.

Honorable Maurice Hoffman
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

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Dear Mr. Hoffman:

We desire to acknowledge receipt of a request for
an opinion from Mr. John W. Mitchell, Assistant Prosecut-
ing Attorney, dated February 14th, which is as follows:

"I should like your opinion as to whether
or not lands purchased by a trustee under
the provisions of Section 9953B laws of
Missouri 1939, page 851, are subject to
taxation for City, State, School or County
purposes after the filing for record by
the trustee of the collector's deed convey-
ing the land to him."

Section 9953a is, in part, as follows:

" * * * No certificate of purchase shall
issue as to such sales but the purchaser
at such sales shall be entitled to the
immediate issuance and delivery of a
collector's deed. * * * "

Section 9953b is, in part, as follows:

" * * * All lands or lots so purchased
shall be sold and deeds ordered executed
and delivered by such trustees upon

order of the County Court of the respective counties and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis, and the proceeds of such sales shall be applied, first, to the payment of the costs incurred and advanced, and the balance shall be distributed pro rata to the funds entitled to receive the taxes on the lands or lots so disposed of. * * * Provided further, that if at any such sale any person bid a sufficient amount to pay in full all delinquent taxes, penalties, interest and costs, then the trustees herein designated shall be without authority to further bid on any such land or lots. "

Section 6, Article X of the Constitution of Missouri, is as follows:

"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 of 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."

Section 7, Article X of the Constitution of Missouri, is as follows:

"All laws exempting property from taxation, other than the property above enumerated, shall be void."

The legislature made plain the purpose in creating such trustee:

" * * * to purchase at such sales all lands and lots necessary to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids."***(Underscoring ours)

The capacity in which such trustee holds such lands, is as follows:

" * * * Such person or persons so designated are hereby declared as to such purchases and as title holders pursuant to collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold. * * * "

We are unable to find any expression in said statute referable to future assessments and levies for general taxes or future assessments and levies of Junior tax lienors. The stated purpose of such statute was to protect the taxes "due and owing" and for which the sale was held.

If it had been the intention of the legislature to vest in the governmental bodies for which the taxes were assessed and levied, such title as to bring such property within the purview of the above constitutional provision, relating to exemption, there would have been some expression indicating such intention. The rule as to the construction of statutes with reference to the question of exempting property from

taxation is stated in the case of State v. Gehner, 11 S. W. (2nd) 30, 34:

"Taxation is a sovereign right of the state, and the abandonment of the right to exercise it can never be presumed; but the intention to abandon it must appear in the most clear and unequivocal terms, as was twice said by this court in early decisions and reiterated in later decisions. Lexington v. Aull, 30 Mo. loc. cit. 487; Pacific Railroad v. Cass County, 53 Mo. loc. cit. 27. 'An exemption from taxation must be clear and unambiguous and should not be created by implication.' Scotland County v. Railroad Co., 65 Mo. 134; State ex rel. v. Arnold, 136 Mo. loc. cit. 450, 38 S. W. 79.

"' In the construction of laws exempting property from taxation it is a cardinal principle that they must be strictly construed. As a rule all property is liable to taxation, exemption, the exception, and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt. It is in no case to be assumed that the law intends to release any particular property from this obligation; and no such exemption can be allowed, except upon clear and unequivocal proof that such release is required by the terms of the statute. If any doubt arises as to the exemption claimed, it must operate most strongly against the party claiming the exemption.' Fitterer v. Crawford, 157 Mo. loc. cit. 58, 57 S. W. 533, 50 L. R. A. 191.

"As the burden of taxation ordinarily should fall upon all persons alike, when one claims an exemption therefrom he must be able to point to the law granting such immunity and it must be clear and unambiguous.' Kansas Exposition Driving Park v. Kansas City, 174 Mo. loc. cit. 433, 74 S. W. 981."

In the case of St. Louis v. Wenneker, 145 Mo. 230, 238, property was left to said city as trustee for charitable uses and it was contended that such property was exempt under the above constitutional provision. The court held:

"We think that the property of a county or city exempted from taxation by the constitutional provisions hereinbefore quoted, is that of which such county or city is the beneficial owner, which is held by it 'for its own use' and not merely in trust. It does not include that in which the only interest of the municipality is as trustee. We therefore hold that this real estate is not exempt from taxation."

In the case of Grand River Drainage District v. Reid, 111 S. W. (2nd) 151, the court held that the land purchased by the district to protect its lien for delinquent taxes was exempt from taxation, but such decision was made because there was a specific statute providing "that upon conveyance to the district such lands shall thereupon become the property of the drainage district." On page 153, the court said:

" * * * Drainage districts are of statutory origin, possessing only such power as is expressly delegated or necessarily implied from those granted. So long as they proceed in conformity

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with the expressed or implied authority conferred, we perceive no reason why they may not successfully invoke the protection of section 6, art. 10 of our Constitution. * * * "

There is no expression in Section 9953b, supra, from which we may conclude that the legislature intended that the property bought by the trustee should become the property of the state or a subdivision thereof, yet there are expressions - none inconsistent with each other - indicating that the property so purchased should not become the property of such governmental units.

CONCLUSION

Therefore, it is the opinion of this department that lands purchased by a trustee appointed under the provisions of Section 9953b, Laws of Missouri 1939, at page 851, are held by such trustee for the sole purpose designated by said statute, i. e., as trustee for the benefit of all funds entitled to participate in the taxes against the lands sold and to receive a pro rata part of the proceeds of a sale made by the trustee under order of court; that the purchase of such lands by such trustee does not affect paramount or Junior tax liens assessed and levied for years subsequent to the years for which the land was sold to the trustee.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

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