

TAXATION: Power of trustee appointed under Sec. 9953b, Laws of Missouri, 1939, pp. 851-852, to enter into contracts of sale.

February 21, 1940

2-26



Hon. John W. Mitchell
Assistant Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

This will acknowledge receipt of your letter of February 15th asking for an opinion upon the following matter:

"Pursuant to the authority conferred by the provisions of Section 9953b found on pages 851 and 852 of the laws of Missouri 1939, our County Court appointed a trustee who bought up a great many parcels of property at the tax sale held in November of last year. The amount of delinquent taxes on a few of these properties is a substantial sum. In two of these cases the amount is as much as \$2000.

"Inquiries have been made of the Court as to whether it would be possible for the trustee to sell such property on installments. One of the arrangements which has been suggested by a prospective purchaser is that stated sums should be paid monthly to the County Collector under the terms of a memorandum agreement signed by the prospective purchaser and the trustee, such agreement to contain provisions upon the completion of the payment of the installments provided for in the contract the trustee should execute the deed conveying the property to the purchaser. Several other sug-

gestions have been made but all of them assume that the trustee would have the right to enter into a contract to sell the property upon the payment of installments, rather than an immediate transfer of the title to the property.

"I should like your opinion as to whether or not the trustee may make such sales. If in your judgment such sales are proper would you suggest the proper procedure to be followed?"

Section 9953b, Laws of Missouri, 1939, pp. 851-852, provides as follows:

"It shall be lawful for the County Court of any County, and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis, to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which Section 9953a is applicable, and to purchase at such sales all lands or lots necessary to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids. 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. Such person or persons so designated shall not be required to pay the amount bid on any such purchase but the collector's deed issuing on such purchase shall recite the delinquent taxes for which said lands or lots were sold, the amount due each respective taxing authority involved, and that the

grantee in such deed or deeds holds title as trustee for the use and benefit of the fund or funds entitled to the payment of the taxes for which said lands or lots were sold. The costs of all collectors' deeds, the recording of same and the advertisement of such lands or lots, shall be paid out of the county treasury in the respective counties and such fund as may be designated therefor by the authorities of the City of St. Louis. 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. Upon appointment of any such person or persons to act as trustee as herein designated a certified copy of the order making such appointment shall be delivered to the Collector, and if such authority be revoked a certified copy of the revoking order shall also be delivered to the Collector. Compensation to trustees as herein designated shall be payable solely from proceeds derived from the sale of lands purchased by them as such trustees and shall be fixed by the authorities hereinbefore designated, but not in excess of ten percent (10%) of the price for which any such lands and lots are sold by the trustees. Provided further, that if at any such sale any person bid a sufficient amount to pay in full all de-

linquent taxes, penalties, interest and costs, then the trustees herein designated shall be without authority to further bid on any such land or lots."

Where the language of a statute is clear and unambiguous and its meaning clear and unmistakable, there is no room for construction. State ex rel. v. Thompson, 5 S. W. (2d) 1. c. 59.

The legislature must be intended to mean what it has plainly expressed, and consequently there is no room for construction. State ex rel. v. Hackman, 314 Mo. 33.

This section is plain and unambiguous and declares its purpose and provides a method of carrying it out.

"A trustee cannot be permitted to deprive himself of a power to sell, conferred for the benefit of the trust, or so to fetter its exercise by himself or his successor as to defeat the purpose of the trust." 26 Ruling Case Law 1290.

CONCLUSION

It is the conclusion of this department that installment contracts of sale would not be authorized under this section.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

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