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TAXATION AND REVENUE: I. Drainage district under county court organization may purchase realty sold for taxes due such district. After such date the land is not subject to taxes.

II. County court may purchase land in foreclosure of school fund mortgage for such fund and takes the title to the property free from all outstanding taxes.

October 29, 1941 general county and state taxes.

Honorable Sam T. Evans
 Prosecuting Attorney
 Daviess County
 Gallatin, Missouri

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Dear Mr. Evans:

We desire to acknowledge your request of October 25, 1941, for an opinion, which is as follows:

"The County Court of Daviess County, Missouri; desire your opinion on the following facts, namely:

1. A Drainage District acquired title to real estate through sale for delinquent drainage taxes; prior to sale state and county taxes had been assessed and levied against said real estate, which were unpaid and delinquent at time of sale for delinquent drainage taxes.

Is the Drainage District obligated to pay said State and County taxes which had been assessed and levied against said real estate prior to its acquiring title through sale for delinquent drainage taxes?

2. The County Court acquired title to real estate at sale of foreclosure of School Fund Mortgage; prior to the foreclosure state and county taxes had been assessed and levied against said real estate, which

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were delinquent at time of foreclosure sale.

Is the County Court obligated to pay these state and county delinquent taxes after acquiring title?

"I refer you to the case of State ex rel. City of St. Louis v. Baumann, 153 SW (2d) 31."

We presume that the county court bought the property involved under a tax sale in foreclosure of a lien for delinquent drainage taxes due a drainage district organized under the county court. Also that the court purchased land under a foreclosure of a school fund mortgage for and in behalf of such fund.

I.

In regard to the right of a county court to buy lands offered for sale in foreclosure of a lien for delinquent drainage taxes due a drainage district, organized under the county court, the Springfield Court of Appeals in the case of Drainage District No. 23 v. Hetlage, 102 S. W. (2d) 702, 710, held:

"Section 11020, vol. 2, R. S. Mo. 1929 (Mo. St. Ann. Sec. 11020, p. 3659), cited by appellant, reads in part as follows: 'Drainage or levee districts heretofore or hereafter incorporated under any of the drainage or levee laws of this state where lands are offered for sale for their own taxes (italics ours) or assessments due thereon, shall be and are hereby authorized to buy such lands at not to exceed the amount of such taxes, assessments, interest, penalties and costs.'

"It also further provides, among other things, for the sale of lands so purchased, but nowhere does it say anything whatever about the right to redeem from state and county taxes. Since this section confers power to bid at a sale for the district's own taxes, but is silent as to the right to bid at a sale for state and county taxes, the presumption is that the Legislature intended that the district should not have the power to bid as to state and county taxes. Dietrich v. Jones et al., 227 Mo. App. 365, 53 S. W. (2d) 1059; Chilton v. Drainage District No. 8, 228 Mo. App. 4, 63 S. W. (2d) 421.

"As insisted by respondent, the maxim, 'Expressio unius est exclusio alterius,' is applicable. Keane v. Strodtman, 325 Mo. 161, 18 S. W. (2d) 896. Applying the maxim to the facts in the case before us, the conclusion follows that the grant of the right to bid at sales for taxes due Drainage District No. 23, by implication, excludes the right of the district to bid at a sale for state and county taxes, or to redeem therefrom."

A drainage district is a "public corporation" and not a private one, and the county court administers its entire affairs, State ex rel. Applegate v. Taylor, 123 S. W. 892.

A drainage district is a public corporation, being a political subdivision of the state, which exercises prescribed governmental functions, Squaw Creek Drainage District v. Turney, 138 S. W. 12. Houck v. Little River Drainage District, 154 S. W. 739. Judgment affirmed in 36 Supreme Court 58, 239 U. S. 254. State ex Inf. McAllister, ex rel. Manion et al. v. Albany Drainage District 234 S. W. 339. Wilson v. King's Lake Drainage & Lovée District 158 S. W. 931. Max v.

Barnard-Bolckow Drainage District 32 S.W. (2nd) 583. Horney Creek Drainage District v. Farm City Inv. Co. 32 S.W. (2nd) 753. Graves v. Little Tarkio Drainage District, 134 S.W. (2d) 70.

In the case of State v. Baumann, 153 S.W. (2d) 31, 35, the Supreme Court, en banc, after holding that a certificate of purchase vested an equitable interest or title in and to the owner thereof, further ruled that a municipal corporation, owner of a certificate of purchase was not subject to taxes. The court in such case at page 35 said:

"The act permits the application of this rule in this case. Therefore, the City is now vested with the equitable title to the land and the land is not subject to taxes. * * *

"Furthermore, the provision making the payment of the outstanding taxes a prerequisite to obtaining a deed could not have been intended to apply to the City, acting in its governmental capacity, which is not liable for taxes. * * * 'Revenue is the object of taxation, and none would result from levying a tax upon the agencies of the state, through which it exercises the functions of government, or by virtue of which it protects and enforces its rights or those of its citizens. Taxation of these functions and agencies would, in effect, be merely taking out of one pocket and putting it into another. In the end, no net revenue would be derived.' See, also, State v. Locke, 29 N.M. 148, 219 P. 790, 30 A.L.R. 407."

While the exact point presented in this inquiry has not been decided by our Supreme Court, the reasoning and holding in the Baumann case supra, is controlling in the opinion of this department.

The ruling in this decision may be questioned by some but it stands until overruled. An application of the above decision to the facts stated by you, in the opinion of this department, results in the conclusion that a drainage district organized under and by virtue of the county court that acquires title to the land through a sale for its own taxes, takes title to the same without being subject to outstanding county and state taxes.

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II.

On determining the status of public school funds and the right of a county court, with reference to the investment, collection and reinvestment thereof, the court, in the case of Saline County v. Thorp S.W. (2d) 183, 186, said:

"It must be remembered that this is a case where public officers were acting for a governmental subdivision of the state, a county, in relation to funds held in trust for the public for school purposes. Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that every one dealing with them must take notice of those limitations. Montgomery County v. Auchley, 103 Mo. 492, 15 S.W. 826.

"Sections 9243-9256, R.S. 1929 (Mo. St. Ann. Sections 9243 to 9256, pp. 7098-7104), say what a county court can do with reference to the investment, collection, and reinvestment of public school funds. These statutes require that county courts 'diligently collect, preserve and securely invest * * * on unincumbered real estate security, worth at all times at least double the sum loaned * * * the county school fund'; and that these funds 'shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools.'"

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The application of general taxation to governmental subdivisions and municipal governments is discussed in the following excerpt from the case of State v. Baumann, supra, l. c. 35, in the following language:

" In Van Brocklin v. Tennessee, 117 U. S. 151, 6 S. Ct. 670, 682, 29 L. Ed. 845; the United States Supreme Court said: 'General tax acts of a state are never, without the clearest words, held to include its own property, or that of the municipal corporations, although not in terms exempted from taxation.' This is quoted in State v. Snohomish County, 71 Wash. 320, 128 P. 667 which held that public policy supports the conclusion that general tax laws are presumed to operate upon private, not public property in the absence of a clear intention to the contrary. The reason for such rule is aptly stated in Laurel v. Weems, 100 Miss. 335, 56 So. 451, 453, Ann. Cas. 1914A, 159. 'Revenue is the object of taxation, and none would result from laying a tax upon the agencies of the state, through which it exercises the functions of government, or by virtue of which it protects and enforces its rights or those of its citizens. Taxation of these functions and agencies would, in effect, be merely taking out of one pocket and putting it into another. In the end, no net revenue would be derived.' See, also, State v. Locke, 29 N. M. 148, 219 P. 790, 50 A. L. R. 407."

Therefore, it is the opinion of this Department that a county court acquiring title to land under foreclosure of a school fund mortgage, for and in behalf of such fund, takes title to the property free from all outstanding general county and state taxes.

Respectfully submitted,

APPROVED:

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