

TAXATION:  
TRUSTEES SALE  
DISTRIBUTION OF  
PROCEEDS OF SALE:

Trustee appointed under the provision of  
Sec. 11131 R. S. Mo., 1939, may sell such  
lands with approval of county court. Pur-  
chase price, after payment of costs there-  
from is apportioned by the county court as  
per the collector's deed and turned over  
to collector for distribution.

February 17, 1942

Mr. June Holloway  
Chief Clerk  
State Auditor's Office  
Jefferson City, Missouri

275

FILE  
41

Dear Mr. Holloway:

This is in reply to yours of recent date wherein you call to our attention opinions dated January 7, 1942, to Charles B. Butler, Prosecuting Attorney of Ripley County, Missouri, and January 14, 1942, to Frank W. Jenny, Prosecuting Attorney of Franklin County, Missouri, wherein we held that the proceeds of the sale of delinquent lands by a Trustee, after payment of costs, should be turned over to the County Treasurer for distribution.

You request that we give this question further consideration because of the fact that under the accounting and bookkeeping system your department has recommended to county officers a satisfactory control and supervision of the tax items for which such delinquent lands are sold can better and more efficiently be maintained by providing that the surplus be turned to the county collector for distribution.

The opinion to Mr. Butler was the only one of the above opinions bearing on this particular question. It held that these funds should be turned over to the treasurer for distribution because the statute section 11131 is silent as to who should make distribution and in the absence of such a provision the county treasury is the only logical place the funds could be placed. Giving this matter further consideration we find as follows:

Section 11124 Revised Statutes of Missouri, 1939, entitled "Shall record delinquent tax property" provides in part:

"\* \* \* And where the words 'back tax book' are now used in laws pertaining to the collection of taxes on delinquent lands, real estate and/or lots, the record of the list of delinquent lands and lots in the collector's office under the provisions of this law shall be held to be (where applicable and except as to city or town 'back tax book') such 'back tax book', and the recording of same by the collector and certification by the county clerk as herein provided, shall be construed as a making of such 'back tax book' of delinquent real estate, lands and lots. Said collector shall be charged with the taxes, penalty and interest shown on such record of the list of delinquent lands and lots." (underscoring ours.)

Section 11130 thereof, is in part as follows:

"Whenever any lands have been or shall hereafter be offered for sale for delinquent taxes, interest, penalty and costs by the collector of the proper county for any two successive years and no person shall have bid therefor a sum equal to the delinquent taxes thereon, interest, penalty and costs provided by law, then such county collector shall at the next regular tax sale of lands for delinquent taxes, sell same to the highest bidder, and there shall be no period of redemption from such sales. 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 11131 thereof, is 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 11130 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 delinquent taxes, penalties, interest and costs, then the trustees herein designated shall be without authority to further bid on any such lands or lots." (underscoring ours).

Under the provision of Section 11124, supra, the collector is charged with delinquent taxes, penalty and interest due on real estate.

Under the provision of Section 11130, supra, the sale is final, and it must be consummated by the immediate issuance and delivery of a collector's deed.

Section 11131, supra, provides for the appointment by the county court of a trustee " \* \* \* with discretionary authority to bid at all sales to which Section 11130 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. \* \* \*"

The office of trustees under said statute is " \* \* \* to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold, \* \* \* " and each trustee as grantee, in such deed, " \* \* \* 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. \* \* \*"

With reference to the costs said Section provides:

" \* \* \* 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 funds as may be designated therefor by the authorities of the City of St. Louis, \* \* \*"

Such lands or lots shall be sold by the trustee only when ordered by the county court, and the proceeds of such sale or 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.\* \* \*" (underscoring ours).

The county court further fixes the compensation of the trustee, who must be paid from such proceeds, before they are distributed.

The Legislature provided a complete scheme of procedure for the collection of delinquent taxes levied against real estate, investing the collector with the duty of the collection thereof. Under such scheme loss, in many instances, was sustained by said funds and for that reason the Legislature supplemented such scheme with that provided in said Section 11131. Said statute is silent as to whom the county court shall order the proceeds delivered for pro rata distribution after such costs are paid.

The sections of the Revised Statutes relating to the collection of delinquent taxes on real estate designates the collector, and the collector alone, as the official who must collect and make settlement for all taxes.

Section 11089 R. S. Mo., 1939, is in part as follows:

"At the term of the county court to be held on the first Monday in March, the collector shall return the delinquent lists and back tax books, and in the city of St. Louis the uncollected tax bills and back tax books, under oath or affirmation, to such court, and settle his accounts of all moneys received by him on account of taxes and other sources of revenue, and the amount of such delinquent lists, or so much thereof as the court shall find

properly returned delinquent, shall be allowed and credited to him on his settlement. \* \* \* (underscoring ours).

Section 11093 thereof is in part as follows:

"The county court shall cause such settlement to be entered of record, so as to show the amount due the state and county, respectively. \* \* \*"

Section 11098 is as follows:

"Every county collector and ex officio county collector, except in the city of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same, less his commissions, into the state and county treasuries, respectively. It shall be the duty of the county clerk, and he is hereby required, to forward immediately a certified copy of such detailed statement to the state auditor, who shall keep an account of the state taxes with the collector."

Section 11103 is as follows:

"Every collector of the revenue having made settlement, according to law, of county revenue by him collected or received, shall pay the amount found due into the county treasury, and the treasurer shall give him duplicate receipts therefor, one of which shall be filed in the office of the clerk of the county court, who shall grant him full quistus under the seal of the court."

The collector is the only bonded official responsible for delinquent taxes in process of col-

Mr. June Holloway

-7-

February 20, 1942

lection and only he can be granted quietus. This can be granted only after such collector has paid into the county treasury the amount found to be due.

In passing section 11131, supra, the Legislature clearly intended to provide a scheme " \* \* \* to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids. \* \* \*" It certainly had no intention to repeal by implication the liability and duties of a county collector, as provided in the above sections without designating another official and fixing his liability and duties with respect to such delinquent taxes under such process of collection.

#### CONCLUSION

Therefore, the statute being silent as to whom the county court shall order such proceeds delivered for pro rata distribution, after said costs are paid, it is the opinion of this department that the Legislature intended that said funds should be, by court order, turned over to the collector and by him distributed.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney-General

APPROVED:

---

Roy McKittrick  
Attorney-General

TWB:FS