TAXATION: Lien of city for delinquent taxes on property is on a par with that of county.

FILED
83

October 29, 1945

11/7

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

We are in receipt of your letter of October 8, 1945, requesting our official opinion on a set of facts submitted to you by the County Collector of Lafayette County, Missouri, which is as follows:

"(1) Last year at the sale several properties were purchased by Mr. Duebbert, Trustee for the County, Deeds for these properties were made by me as Collector to Mr. Duebbert, Trustee, on November 15th, 1944, same were duly recorded. Now, the City Officials of Higginsville, Mo., are advertising for sale some of the properties heretofore sold to Mr. Duebbert, Trustee. We would want to know if the City has the authority to sell them for delinquent city taxes, the properties in question are now owned by the County. Some two or three tracts sold by me to Mr. Duebbert, Trustee, have since been sold by the Trustee to other individuals. In connection with the information desired, will you advise us our exact position.

"(2) This year we have some properties at Higginsville that we are to offer for sale on account of delinquent County & State taxes. The City of Higginsville is also advertising these properties for sale on account of delinquent City taxes. In this con-

> nection we would want to know our exact position. At our sale the properties will be either purchased by some individual, or Mr. Duebbert as Trustee. At the sale conducted by the City of Higginsville, the same property may be bid in by some other individual. Which sale has the precedence, and which purchaser will be the rightful purchaser. We would like to have a reply before November 5th, so that we can confer with the City Officials of Higginsville before the date of the sale."

Section 11109, R. S. Mo. 1939, fixes the lien of the state for taxes due and unpaid on any real estate. That section is as follows:

> "The taxes due and unpaid on any real estate which has heretofore been returned delinquent, and which has not been forfeited to the state, and the taxes due and unpaid on any real estate which has been forfeited to the state for the nonpayment of such taxes, shall be deemed and held to be back taxes, and the lien heretofore created in favor of the state of Missouri is hereby retained on each such tracts and lots of real estate to the amount of the taxes due thereon, and also the interest and costs accruing under this chapter."

A lien is also created in favor of the state for all taxes due any city, incorporated town, or school district, by Section 11206, R. S. Mo. 1939, which is as follows:

> "Real property shall in all cases be liable for all taxes due any city or incorporated town or school district, and a lien is hereby created in favor of the state of Missouri for all such taxes, the same as for state and county taxes, which lien shall be enforced as in this chapter provided."

By Section 11207, R. S. Mo. 1939, the lien so created is assigned to the city in interest. That section is as follows:

> "A lien, such as is now provided for by law in favor of the state for taxes due and unpaid on real estate, is hereby created in favor of such cities aforesaid, for taxes due thereon and for all interest and costs accrued thereon or incurred under this chapter: Provided, that all liens now existing in favor of said cities, by virtue of their charters, are hereby retained, and the same may be enforced in like manner and with like effect as provided for in this chapter."

Under our statutes, therefore, the lien of the city is on an equal basis with that of the state and county for taxes due and unpaid on any tract of real estate. The State Supreme Court has followed this view in State ex rel. McGhee v. Baumann, 160 S. W. (2d) 697. After referring to the statutes above quoted, that decision states, l. c. 699:

> " * * * The wording of these sections indicates that the lien for general city, town and school taxes is on an equality with the lien for general state and county taxes and that is the general rule. 26 R.C.L. page 404, sec. 361."

That decision also holds that the lien for each year is on a parity with that for every other year until barred by limitations. After pointing out that in some decisions in this state it was held that the last special tax bill issued constituted a prior lien over former tax bills, subsequent opinions were cited with approval in which it was held that the sale for general taxes for one year does not divest the state of its lien for unpaid taxes for a previous year, and the court concluded:

> "But under existing Missouri statutes we do not believe we are authorized to hold that the lien for general taxes takes precedence in the reverse order of accrual."

After pointing out that under the Jones-Munger Act, sales for state and county taxes are made by the county collector and sales for city taxes are made by the city collector under a different advertisement, the court proceeded to determine the question at hand, in the following language, l.c. 699:

> "One purpose of Sections 11149 and 11152 evidently is to prevent a sale by the county collector from destroying the lien for city taxes and to prevent a sale by the city collector from destroying the lien for state and county taxes, both liens being on an equality. Section 11152 requires the purchaser, before receiving a deed, to pay prior unpaid taxes, but, as the county collector is not authorized to receive city taxes and the city collector is not authorized to receive state and county taxes, Section 11149 makes the deed subject to such unpaid prior taxes as the collector is not authorized to collect. That is, the deed of the county collector is subject to prior unpaid city taxes and the deed of the city collector is subject to prior unpaid state and county taxes."

It would appear from the above that a purchaser of the lien of the state and county must satisfy the lien of the city, after securing his tax deed from the county collector, before being able to obtain the property free from liens, and that the same would be true of a purchaser of the tax lien of the city. If the sales by the city and county were on different dates, the purchaser at the earlier sale, upon securing his deed two years later from the collector of the city or county, as the case might be, would obtain such color of title as would enable him to redeem the property from the lien of the other taxing authority.

CONCLUSION

It is, therefore, our conclusion that a city has authority to sell property for delinquent city taxes to satisfy its

lien, even though the property involved may have been purchased by a county through its trustee at a tax sale, since such county would acquire only the tax lien foreclosed by such sale.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RLH:HR