

TAXATION: VOID TAX SALE:
PURCHASER'S BID TO BE
REFUNDED, WHEN:

County court is authorized to refund amount of bid and interest to purchaser at void tax sale only under circumstances provided by Section 140.530, RSMo 1949. Court cannot legally refund total amount of taxes, plus interest on same to purchaser who paid taxes on land described in collector's deed for years subsequent to void tax sale.

January 15, 1952



1-25-52

Honorable J. W. Thurman
Prosecuting Attorney
Hillsboro, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which request reads as follows:

"I enclose herein copy of a letter just received from the County Clerk wherein he requests an opinion as to the authority or duty of the County Court to reimburse a purchaser of delinquent property under the circumstances disclosed in his letter.

"As I construe Section 140.530 under circumstances such as mentioned by Mr. Coleman, the Court has no choice other than to refund with interest the amount paid Mr. Neubauer, at the time this land was sold for delinquent taxes together with the sum he has expended in payment of the taxes which have accrued since the date of purchase.

"In the event you conclude that my construction of the Statute is right I should also like to know out of what funds the refund should be made."

From the facts given in the opinion request and also in the enclosed copy of a letter of the County Clerk of Jefferson County

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Missouri, addressed to you, it appears that a Mr. Neubauer purchased certain real estate at a tax sale and received a collector's deed on November 3, 1947. The property was offered for sale and returned as delinquent for nonpayment of taxes, interest, penalties and costs for the years 1942, 1943, 1944, 1945 and 1946. The purchaser paid the taxes on the property described in his deed, for the years 1947, 1948, 1949, 1950 and 1951, and after payment of the 1951 taxes, he first learned that said land had been doubly assessed on the tax books, that he received no title by virtue of the collector's deed, and had been paying taxes on property he did not own during the years subsequent to the tax sale.

The purchaser now demands the county court to refund to him the amount of the original bid plus eight percent interest on such sum from November 3, 1947. He also demands a refund of the total amount of taxes paid by him for the years 1947 to 1951, inclusive, plus interest on that sum at the rate of eight percent per annum.

From the opinion request and the copy of the County Clerk's letter it was not clear whether the property had been merely doubly assessed or whether it had been doubly assessed under two different land descriptions and no taxes had been paid on either of them, so we found it necessary to ask you to explain the facts more in detail.

Your second letter greatly clarifies the facts concerning this matter, and it now appears that the land had been originally described in the tax books by acreage, but that some time later, (no date is given) the owner subdivided the property into lots and blocks and that the two descriptions appeared on the tax books at the same time and presumably assessed to the same owner. The owner paid taxes on the lots and blocks description but the land was sold for delinquent taxes for the years mentioned above under the original, or acreage description, although no taxes were due at the time of the sale.

In your second letter you have repeated your request for an opinion, and since we find said request expressed in clear and concise terms, we shall adopt same as the basis upon which to write the opinion.

Said request reads as follows:

"The question for your decision is, should the county re-imburse the purchaser at the tax sale for the amount of his bid and also for the amount of taxes he has paid since he

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purchased the property at the tax sale.
Furthermore is he entitled to interest?
If you find the County should re-imburse
the purchaser then we should like to know
what fund it should be paid out of."

It is intimated that the purchaser received no title to the land purchased because the sale was void and your first inquiry deals with this situation, namely, the authority of the county court to reimburse the purchaser for the amount of his bid and interest on that amount.

Section 140.530, RSMo 1949, provides the circumstances under which a tax sale is void and the duty of the county court to refund the purchaser the amount of his bid and interest, to be paid out of the county treasury. Said section reads as follows:

"No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and for the first two enumerated causes, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the county court."

This section is the same as Section 11156, Mo. R. S. 1939, and in the case of Sharp v. Richardson, 182 S. W. (2d) 151, 353 Mo. 138, the court had occasion to construe this and another section of the statutes. The facts involved were in some respects similar to those given in the opinion request, in that property purchased by a trustee for the county at a tax sale held in New Madrid County was bid in by the trustee, who later sold it to another person and which land was finally purchased by the appellant. The property was described as "14 acres, N. W. quarter of S. W. quarter, except certain town lots * * *." The owner had paid the taxes prior to the sale and later brought suit to recover the property, contending that the tax deed was void because of the indefinite description of the land sought to be conveyed thereby, and for the further reason that the sale was void because no taxes were due on the property at the time of the sale, as they had been previously paid by the owner.

In commenting upon appellant's contention, the court said at 1. c. 143 and 144:

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"First, appellant says that the petition fails to state a cause of action because it does not offer to refund to defendant the taxes paid by him or his predecessors in title, citing Section 11179, Revised Statutes Missouri 1939, (Mo. R. S. A. vol. 22, p. 384) and two cases construing that statute. The contention cannot be sustained under the circumstances of this case. Neither the appellant nor his predecessors have paid any taxes. No doubt the county applied the money received from the sale by its agent, Steele, to the payment of taxes appearing to be due under the assessment as part of a section, but it had already collected the taxes from respondent under an assessment as lots and blocks. The tax sale to appellant's predecessor in title was void for two reasons mentioned in Section 11156, Revised Statutes Missouri 1939 (Mo. R. S. A., vol. 22, p. 359) to wit: because the taxes had already been paid before the sale and the assessment upon which the sale was based failed to describe the land with reasonable certainty. The latter section further provides that if the sale is void for either of the reasons mentioned the purchase money shall be refunded by the county. We think the meaning of the two sections, when read together, is that an owner who seeks to set aside a tax sale must offer to refund any taxes which he has failed to pay and which have been paid by the purchaser at the tax sale or his grantees, but if the owner has already paid the taxes before the sale the purchaser must look to the county for the refund of any taxes paid by him after they have previously been paid by the owner."

(Underscoring ours.)

In answer to your first inquiry, it is our thought that upon proper application and proof being offered by the purchaser at the void tax sale, it shall be the duty of the County Court of Jefferson County to refund to such purchaser, out of the county treasury, the amount of the bid, plus interest on such amount from November 3, 1947, until date of payment under the

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provisions of Section 140.530, supra,

Your second inquiry is whether or not it is the duty of the Jefferson County Court to reimburse the purchaser at the void tax sale for the total amount of all taxes, and interest on such sum, expended by such purchaser for taxes in the years subsequent to the tax sale.

It appears that the purchaser had paid the taxes upon the property described in his tax deed for the years, 1947 to 1951, inclusive, and had paid the taxes for 1951, before first learning that he had not received any title to such property, and it is for these years' taxes and interest that he demands the court to reimburse him.

In discussing your first inquiry, it was pointed out that the purchaser was entitled to a refund for the amount of his bid and interest, by reason of the void tax sale only because Section 140.530, authorized the county court under such circumstances to make the refund from county funds, as there was no common law duty upon the state or the former owner to reimburse a purchaser at a void tax sale.

The same rule applies also to the circumstances mentioned in your second inquiry. There is no common law liability of the county to reimburse a purchaser at a void tax sale for the amount of money expended by him for taxes on the property described in his deed in years subsequent to such tax sale.

Section 140.530, supra, does not provide that the county shall make the refund to a purchaser for taxes in years subsequent to such sale and no other Missouri statutes authorize the court to make such a refund. In the absence of a statute authorizing such action, the county is not liable and the court is not authorized to reimburse the purchaser as suggested in the second inquiry of the opinion request.

Therefore, in answer to your second inquiry, for the reasons given above, it is our thought that the County Court of Jefferson County lacks the power and cannot legally refund to the purchaser (from county funds) the amount expended by him for taxes in years subsequent to the void tax sale on property described in the purchaser's tax deed, together with interest on such amount.

Your third inquiry is to the effect (anticipating that the answers to the first and second inquiries are in the affirmative)

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as to what county funds the county court may draw upon in making the tax refund and interest to the purchaser referred to in the opinion request.

The same inquiry has been discussed in an opinion of this department rendered to the Honorable John W. Mitchell, Prosecuting Attorney of Buchanan County, Missouri. It is believed that the opinion fully answers your third inquiry, and we are therefore enclosing a copy of that opinion for your consideration.

CONCLUSION

It is the opinion of this department that where real estate was sold for taxes by a county collector and that the taxes on such property had been paid by the owner prior to such sale, the sale was void and the purchaser received no title to the property described in the collector's deed, but that such purchaser may make proper application and proof to the county court of the county in which the sale was held for a refund of his bid and interest. Upon being satisfied of the validity of the claim, it shall be the duty of the county court to refund to such purchaser the amount of his bid with interest from the date of the sale until payment is made from the county treasury. That the liability of the county and the duty of the county court to make the refund to the purchaser is not created by the common law, but only under the provisions of Section 140.530, RSMo 1949. No Missouri statutes provide that the county shall be liable and shall refund to a purchaser at a void tax sale the total amount expended by him with interest thereon for taxes on the property described in his tax deed for the years subsequent to such void tax sale, and it is the further opinion of this department that under these circumstances the county court lacks the power and cannot legally refund the amount of the subsequent years' taxes and interest thereon to such purchaser.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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