

TAXATION AND REVENUE : Construction of Senate Bill No. 94, Laws of Missouri 1933 and Senate Bill No. 311, Laws of Missouri 1939 as to the question of description in procedure affecting title.

October 27, 1939.

Honorable W. E. Coffey
Assistant Prosecuting Attorney
St. Francois County
Farmington, Missouri



Dear Mr. Coffey:

We desire to acknowledge your letter of October 23, 1939, which is as follows:

"Replying to your favor of October 19, addressed to Judge Frank Foshee, Senior, of the County Court, Desloge, Missouri, will say that the attorneys representing the owners of the property in question on which there are several years taxes delinquent, contend that if the Collector sells this tract of land for the payment of taxes, the premises being erroneously described, as they are in the view of these attorneys, that the Collector could not give a clear title under the Missouri Court decisions. Particularly, State ex rel vs. Borough, 174 Mo. 700 and State ex rel vs. Sanford, 127 Mo. 368 and others.

In other words, the contention of these gentlemen is that if the Collector made sale for the payment of taxes, he could not deliver a good title under his deed and even though the property is bought in by a Trustee appointed by the County Court, said Trustee having purchased under an insufficient description, could not in turn, sell the property and convey a good title for the reason that he would likewise have to convey

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the same under an erroneous description.

"I am enclosing you at the request of these attorneys their brief in the matter touching the points at issue. If you will kindly go over this matter and advise the State Auditor whom we are writing today and also let this office know your ruling and we shall be very grateful.

"The following is the description of the property in question: 49 A. being the SW part of SE fractional quarter, Section 7, in Township 36, Range 6 all in St. Francois County, Missouri."

Section 9952a, Laws of Missouri 1933 provides, in part, as follows:

" * * * and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale * * * . The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, etc."

Section 9958b thereof, is 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."

Section 9958c thereof, is as follows:

"If any conveyance for taxes shall prove to be invalid and ineffectual to convey title because the description is insufficient, or for any other cause than the first two enumerated in the preceding section, the lien which the state has on such lands shall be transferred to and vested in the grantee, his heirs and assigns, who shall be entitled to a lien on such land for the amount of taxes, interest and penalty, legally due thereon at the time of such sale, with interest, together with the amount of all subsequent taxes paid, with interest, and such lands shall be bound for the payment thereof."

Section 9958d thereof is, in part, as follows:

"Every person holding a lien upon any real estate in this state by virtue of any illegal or invalid tax deed, shall, upon the payment or tender to him by the owner * * * of the full amount of said lien, * * * make, execute and acknowledge * * *, and deliver to the person making such payment or tender a deed of release * * *."

Section 9962c thereof, providing a manner of quieting title by purchaser under deed at a delinquent tax sale, and for procedure of sale is, in part, as follows:

"Any person holding any deed of lands or lots executed by the county collector for the non-payment of taxes, may commence a suit in the circuit court of the county where such lands lie, to quiet his title thereto, without taking possession of such lands, and all parties who have, or claim to have, or appear of record in the county where such land or lot is situated, to have any interest in, or lien upon, such lands or lots, shall be made defendants in such suit, and no outstanding unrecorded deed, mortgage, lease or claim shall be of any effect as against the title or right of the complainant as fixed and declared by the decree made in such cause. The court shall examine into the facts, and if upon the hearing of such cause it shall appear that the complainant's title was or is invalid for any cause, such suit shall not be dismissed by the court, but the court, in cases where the tax was due and unpaid, or where the complainant's title was invalid for defect or uncertainty of description shall ascertain the amount due the complainant, for principal and interest, to be computed at not to exceed ten per cent per annum, and from whom due, and shall decree the payment thereof within a reasonable time by the owner of such land, the owner of any life estate therein, or any other person in possession as lessee thereof and owing such sum ascertained, and in default thereof shall direct that such leasehold, life estate and land or lot be sold therefor, and that the equity and right of redemption of all defendants in such suit, and all persons claiming under them shall be forever

foreclosed. In any such sale the rents and profits of said land for a term not exceeding seven years shall be first offered for sale and on failure to realize a sum sufficient to discharge said lien and cost of sale, then the interest of the person so adjudged to be owing (owing) the amount so ascertained shall be next offered for sale; on failure to realize therefrom a sum sufficient to discharge said lien and cost of sale then the life estate in such land together with the interest of the person adjudged to be owing the amount so ascertained shall be next offered for sale and on failure to realize a sum sufficient to discharge said lien and costs of sale, then finally, the fee simple of such land shall be offered for sale. In case of the sale of such land or any part or parcel thereof or any interest therein, the sheriff shall upon the receipt of the purchase money execute to the purchaser a deed in fee simple, or a lease for the unexpired term of the interest so sold, as the case may be, and there shall be no redemption from any such sale, and the purchaser shall have the right of immediate possession of such land or lot. At such sale if such land or any part or parcel thereof or any interest therein be sold for a sum in excess of the lien and cost, then such surplus shall be paid over to the person or persons lawfully entitled thereto as such rights are determined by the court in its decree in said cause. If the court shall upon the hearing of such cause determine the title of the complainant to be valid it shall so decree. * * *

Section 9962d thereof, is, in part, as follows:

"If any conveyance made by the county

collector, pursuant to a sale made for the non-payment of taxes under this or any former tax law, shall prove to be invalid and ineffectual to convey title for any other cause than such as are enumerated in section 9960b the lien which the state had on such land for state, county, township, school and all lawful purposes, together with all lawful charges, shall remain in full force, and shall be transferred by such deed to the grantee and vested in him, his heirs and assigns, who shall be entitled to a lien upon such lands, and the same shall be bound for the final payment thereof; and in case judgment be rendered against the person holding the title from the collector, as aforesaid, for the recovery of such land, in an action of ejectment or other action, either at law or in equity, brought by the owners of such lands, heirs or assigns, the court shall ascertain the amount due to the party holding such tax deed and from whom due for principal and interest and for all improvements made by him on such lands including subsequent taxes paid with interest, and shall decree the payment thereof within such reasonable time by the owner of such land; if there be an owner of any life estate or any other person first liable for the payment of such taxes, such ownership and liability shall be ascertained by the court and entered of record in such cause, and in default of such payment the court shall decree that such life estate, the interest of such debtor in such lands and the fee simple thereof, shall be sold therefor or sufficient thereof to pay the amount of such improvements, principal and interest as above set forth, due to the party having the collector's deed, his heirs and assigns. Such property

shall be offered and such sales shall be made in the order, and in the manner and form as provided in section 9962c: * * *

Section 9953a of Senate Bill No. 311, Laws of Missouri 1939, at page 851, provides that the highest bidder at a third sale shall be entitled to the immediate issuance and delivery of a collector's deed.

If the description in a notice for the third sale of delinquent tax lands is perfect or describes the land with reasonable certainty and the procedure provided in Senate Bill No. 94 of the Laws of Missouri 1933 is strictly followed, the recipient of a deed, under the provisions of Senate Bill No. 311, Laws of Missouri 1939 and especially Section 9953a thereof, at page 851, would obtain a good title from such sale.

"If any conveyance for delinquent taxes shall prove to be invalid and ineffectual to convey title because the description is insufficient", as provided in Section 9958c, supra, the purchaser at such sale becomes the transferee of the lien of the state in and to the delinquent tax on the land and may obtain his rights under the provisions of the above statutes.

"When the description in the assessment", levy and notices of sale "fails to lead to identification so that neither the owner nor officer can tell that this land is taxed * * * the assessment is void" and, therefore, the levy, notices of sale and sale thereunder, are void.

Such was the conclusion reached by the court in the case of National Cemetery Association vs. Benson, 129 S. W. (2nd) 842, 845 (10, 11) in the following quotation:

"The assessments are not void because the description '65 acres unplatted portion of Valhalla Cemetery' in Normandy School District is insufficient. In some assessments the word 'unplanted' was inadvertently substituted for 'unplatted.' We have followed the general rule in this State that a description is sufficiently definite and certain if the description by its own terms

will enable one reasonably skilled in such matters to locate the land. *Elsberry Drainage District v. Seerley*, 329 Mo. 1237, 49 S. W. 2d 162. A valid assessment is essential to a valid tax. In *State ex rel. Wyatt v. Wabash Railway Company*, 114 Mo. 1, 21 S. W. 26, we quoted from *City of Philadelphia v. Miller*, 49 Pa. 440: 'Where the assessment wholly fails to lead to identification, so that neither the owner nor the officer can tell that his land is taxed, the duty of payment cannot be performed, and the assessment is void.'

* * *

Section 9952a, *supra*, provides that, "it shall not be necessary to include the names of the owner, etc" in the notices of sale. Also that the entry of record by the county collector listing the delinquent land and lots shall become a levy. The levy and notices constitute due process and if there were a description of land and lots therein where the description "wholly fails to lead to identification, so that neither the owner nor the officer can tell that his land is taxed" certainly the owner could not be held responsible under a subsequent summary proceeding.

We can not pass upon your individual case for it may develop into a matter of controverted fact. Let us presume that the Southeastern fractional $\frac{1}{4}$ of Section 7, Twp. 36, Rng 6, St. Francois County, Missouri, was in the corner, adjoining two counties, and there was only 49 acres of land in such fractional quarter and all in the Southwest part thereof. Or that all of such fractional quarter was washed away by the river except 49 acres in the Southwest part thereof. All owned by one person. The very fact that said quarter is fractional shows that it is not uniform. Any statement of facts might develop. Therefore, we are rendering the opinion on the basis of general rules of law.

Another question arises, has the collector authority to determine whether the description in the levy is valid, invalid or void, and on such decision, advertise, or fail to advertise, lands or lots for sale for delinquent taxes.

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This question was passed on by this department in an opinion to Honorable Morgan M. Moulder, Prosecuting Attorney of Camden County on May 21, 1937, a copy of which is enclosed herein.

CONCLUSION

Therefore, it is the conclusion of this department that a description in an assessment, levy and notice of sale of lands for delinquent taxes is sufficiently definite and certain when such description "by its own terms will enable one reasonably schooled in such matters to locate the land". That even though such description in a conveyance, made by the county collector for delinquent taxes is so imperfect as to fail to describe the land and lots with reasonable certainty and is thereby ineffectual to convey title, the delinquent tax lien of the state is thereby transferred, if the description in said conveyance comes within the requirement of the above rule.

It is, further, our opinion that when the assessment, levy and notices of sale carry a description which would wholly fail to lead to identification, so that neither the owner nor officer could tell that the land is taxed, such assessment, levy, notices of sale and all proceedings thereunder are void.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

SVM:LB