

TAXES: Delinquent, : Taxes are not delinquent on forest croplands
Land Sales : if a sum in lieu of such taxes is paid to
: counties in which such lands lie from the
: Forest Croplands Fund. Such lands may not
: be sold on account of taxes so relieved.



September 3, 1952

9-4-52

Honorable Friend B. Greene
Prosecuting Attorney
Shannon County
Eminence, Missouri

Dear Mr. Greene:

This will be the opinion you requested from this office, respecting the character of delinquent taxes upon which a County Collector may advertise and sell lands classified as forest croplands under Chapter 254, RSMo 1949--our State Forestry Law. Your letter requesting the opinion states:

"A situation has come up in our county with relation to forest crop lands - those lands on which the State of Missouri makes up a part of the taxes lost by reason of the reduction in taxes that are collected during the running of the 20 years while the lands are under the program. Some tracts under this program are delinquent as to that part of the taxes the owner is supposed to pay, and there is a likelihood that they will be offered for sale this year, now, under the circumstances, the Collector of Revenue for this county requests your opinion thru this office as to the sale, in this wise: Does the land advertise for the amount of current taxes shown to be due on his books or does he add that differential rebated by reason of the forest crop program."

The specific question you ask is, in case the County Collector proceeds to sell lands included in a forest cropland plan for delinquent taxes, "does the land advertise for the amount of current taxes shown to be due on his books or does he add that differential rebated by reason of the forest crop program". Said Chapter 254 provides for the creation of cropland districts and the classification of forest croplands by

Honorable Friend B. Greene:

the Conservation Commission of Missouri called in said chapter the "Commission". Said Chapter 254 in Section 254.080 thereof, provides that such classified forest croplands may receive partial relief from taxation during a period, or periods, of time not to exceed twenty-five years in any case.

The chapter further provides in Section 254.090 that, during the time any such lands are classified as forest croplands they shall be assessed for general taxation purposes at one dollar per acre and taxed at the local rates of the county wherein the lands are located.

Chapter 140, RSMo 1949, covers the subject of "Collection of Delinquent Taxes, Generally". Section 140.010 of said chapter defining delinquent real estate taxes, reads, in part, as follows:

"All real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent, and the said county collector shall proceed to enforce the lien of the state thereon, as required by this chapter, * * * ."

Section 140.020 also defines such delinquent taxes as "back taxes".

Section 140.030 of said chapter provides that when the Collector is unable to collect taxes specified on the tax book, after due effort to collect the same, he shall make two lists, one called the "'tangible personal property delinquent list,'" the other to be called the "'land delinquent list,'" in the latter of which "shall be stated the taxes on lands and town lots where taxes have not been collected, with a full description of said lands and lots, and the amount of taxes due thereon, set opposite each tract of land or town lot".

Section 140.050 requires the County Clerk to make a back tax book, after such lists have been filed in his office, and when completed such book shall be delivered to the Collector.

Section 140.060 provides that all tracts of land or city lots on which back taxes are due shall be listed in numerical order with the legal description thereof, the name of the owner if known, or if unknown in the name of the person to whom such land was last assessed, and to be set forth opposite each tract of land or town lot. The section further provides that in appropriate columns, shall be entered the year or years for which such land tax is delinquent, the amount of original tax due each fund, the interest due on such tax at the time of making the

Honorable Friend B. Greene:

back tax book, the clerk's fee and the aggregate amount of taxes, interest, and clerk's fees charged against such land for all the years delinquent, and the aggregate to bear interest at the rate of 10% per annum from the time of making such book until paid.

Section 140.010 provides a penalty of 10% of each year's delinquency shall be added to the amount of the delinquent tax, except that the penalty on lands redeemed prior to sale shall not exceed 1% per month or fractional part thereof or 10% annually.

Section 140.110, requiring the Collector to collect delinquent taxes on land and lots according to the taxes contained in such back tax book, reads, in part, as follows:

"The collectors of the respective counties and the collectors of such cities, respectively, shall proceed to collect the taxes contained in such back tax book or recorded list of the delinquent land and lots in the collector's office as herein required, * * *".

Pursuant to the foregoing procedures, and requiring the sale by the County Collector of all lands and lots for delinquent real estate taxes contained in such back tax book, after due notice of such intended sale as provided in Section 140.170 of said chapter, Section 140.150 provides as follows:

"1. All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this chapter on the fourth Monday in August of each year.

"2. No real property shall be sold for state, county or city taxes without judicial proceedings, unless the notice of sale shall contain the names of all record owners thereof, or the names of all owners appearing on the land tax book and all other information required by law; provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor.

"3. The entry of record by the county collector listing the delinquent lands and lots

Honorable Friend B. Greene:

as provided for in this chapter shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

These provisions authorizing the sale of real estate for delinquent taxes have been referred to by the Courts as the "Jones-Munger Law". Such sections in our present Revision of 1949, providing for the Collector's proceedings for the sale of real estate for delinquent taxes, were numbered in the 1939 Revised Statutes as Section 11108, etc.

We have thus observed by such statutes that land or town lots may only be sold under Section 140.150, by the Collector for delinquent taxes or back taxes such as are included in the "Land Delinquent List" (Section 140.030) and which are extended in the "Back Tax Book" (Section 140.070).

Our Supreme Court in the case of Mahurin, et al. vs. Tucker, 161 S.W. (2d) 423, construed certain sections of the Jones-Munger Law of the Revision of 1939 with respect to the purpose and effect of said statutes as to requiring the sale of lands for delinquent taxes. The Court, l.c. 424, on that question, said:

"The Jones-Munger law contemplates that the sale take into account all the then existing delinquent taxes. * * * ."

(Citing Sections 11126, 11129, R.S.Mo. 1939).

Reverting again to Chapter 254, Section 254.180 thereof, provides for the creation of a "forest cropland fund" to consist of yield taxes named in said chapter, monies appropriated from general revenue funds of the State for such purposes, and monies available to the State from Federal funds for purposes of said chapter.

Section 254.110 further provides that the Commission, noted in said chapter, may determine as of January first of each year the number of acres of privately owned forest cropland which have been accepted in each county under said chapter, and may pay to each county in which such forest croplands are situated, a certain sum out of such fund as a grant in lieu of taxes. (Underscoring ours.)

Honorable Friend B. Greene:

We have observed from Section 140.010, supra, that theretofore unpaid taxes become delinquent on January first of each year. Section 254.110 of said Chapter 254 provides that the Commission shall determine as of January first of each year the number of acres of privately owned forest cropland which have been accepted in each county under the Forest Cropland Plan provided for in such chapter. This section further provides that the State may pay to each county in which such lands are situated, a certain sum out of the Cropland Fund provided for in Section 254.180 of such chapter as a grant in lieu of taxes, of .02¢ per acre per year for each acre so accepted. The section further provides that the Commission shall annually certify to the Director of Revenue and the State Auditor the amount payable to each county and which the Treasurer is directed to pay, after appropriations are made for such fund as provided for in said section, on or before the First day of January following.

Reading Section 140.010 and Section 254.110 together, it is clear, we believe, that if, under said Section 254.110, such payment and grant to any county having a Forest Cropland Plan is made before the First day of the following January, as partial relief, as provided in Section 254.080, from taxes, such taxes so relieved, would not, and could not, become delinquent under said Section 140.010. They would simply, to the extent of such relief, not exist, and hence, could not become delinquent. Keeping in mind the above-noted statutes which permit the sale of real estate only for delinquent taxes, and keeping in mind also the fact that under said Section 254.110 the sums paid out of the Forest Cropland Fund to the counties, as is provided in said section, before the First of the following January, it becomes further apparent that such taxes as are so paid to the counties by reason of a Forest Cropland Program may not be included in the aggregate of delinquent taxes upon which a sale of real estate within a Forest Cropland District may be effected by the County Collector, and that only the taxes shown to be due and delinquent on the Collector's back tax book shall be included in the notice advertising the sale and in carrying out such sale itself.

CONCLUSION.

It is, therefore, considering the premises, the opinion of this Department that the Collector of Revenue in a county having a Forest Cropland Plan in effect may not include in the notice of sale of land, nor in the sale itself, as delinquent

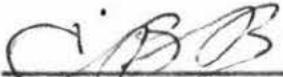
Honorable Friend B. Greene:

taxes the sums paid to any county from the Forest Cropland Fund as a grant during any year in lieu of taxes which might otherwise become delinquent the first of the following January, because such taxes would not, and could not become delinquent, but may only base such notice and sale on the taxes shown to be due and delinquent on the Collector's back tax book.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

GWC:ir