

COUNTY TRUSTEE:
DRAINAGE DISTRICT:
TAXATION:

A drainage district is not entitled to participate in the surplus of proceeds received from lands sold by a county trustee under the provisions of Section 140.260, RSMo 1949. A drainage district does not have the authority to compromise delinquent drainage taxes.



December 14, 1953

Honorable James J. Wheeler
Prosecuting Attorney
Chariton County
Keytesville, Missouri

Dear Mr. Wheeler:

In your letter of September 14th, 1953, you requested an opinion of this office as follows:

"On August 25, 1952, the trustee for this county purchased 40 acres of land at the third tax sale for \$85.69, and received a tax deed for same.

"This land was subject to drainage district tax in the amount of approximately \$490.00 at the time.

"On August 3, 1953, the county trustee sold the land for the sum of \$250.00.

"The County Court wishes to know if the excess amount received above state and county taxes should go to the tax sale surplus fund or be applied on the delinquent drainage tax.

"Also, the County Court wishes to know if a drainage district has the power to rebate delinquent drainage taxes."

Provision is made for the purchase by the county of land sold at the third offering, by Section 140.260, RSMo 1949.

"1. It shall be lawful for the county court of any county, and the comptroller, mayor and president of the board of assessors of the

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city of St. Louis, to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which section 140.250 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.

* * *

"5. 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. * * *" (Emphasis curs.)

Thus, the answer to your first question depends upon the interpretation given to the words "funds entitled to receive the taxes on the lands or lots so disposed of."

That the Jones-Munger Act, of which Section 140.260 is a part, was not intended to apply to collection of drainage and levee district taxes is indicated in St. John Levee and Drainage District of Missouri vs. Pillman, 336 Mo. 93, 76 S.W. (2d) 1095, l.c. 1096, wherein the court stated:

"* * * We find nothing in the act which indicates that the Legislature intended to change the procedure for the enforcement of levee and drainage taxes. * * *"

Thus, Section 140.260 does not apply to drainage districts. To buttress our conclusion that drainage districts are not entitled to participate in the proceeds at hand, it is noted that Section 242.590 and Section 243.370 provide for liens for drainage districts, and give to drainage districts the power to preserve their right to taxes on the land if they take advantage of the statutory methods provided. In view of the distinct and separate categories into which collection of drainage district taxes, and the collection of general taxes are placed, it is our conclusion that the drainage

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district tax collection provisions are exclusive, and that if a drainage district fails to take advantage of its rights under those provisions, it cannot fall back upon the Jones-Munger Act to remedy its own neglect.

The next question is whether a drainage district has the power to "rebate" delinquent drainage district taxes. It is our assumption that you do not mean "rebate" but rather inquire whether the county court has the power to compromise drainage district taxes. Section 140.120, RSMo 1949, authorizes the compromise of back taxes as follows:

"Whenever it shall appear to any county court, or if in such cities the register, city clerk or other proper officer, that any tract of land or town lot contained in said back tax book or recorded list of delinquent land and lots in the collector's office is not worth the amount of taxes, interest and cost due thereon, as charged in said back tax book or recorded list of delinquent land and lots in the collector's office, or that the same would not sell for the amount of such taxes, interest and cost, it shall be lawful for the said court, or if in such cities the register, city clerk or other proper officer, to compromise said taxes with the owner of said tract or lot, and upon payment to the collector of the amount agreed upon, a certificate of redemption shall be issued under the seal of the court or other proper officer, which shall have the effect to release said lands from the lien of the state and all taxes due thereon, as charged on said back tax book or recorded list of delinquent land and lots in the collector's office; and in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said back tax book or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot."

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The above section does not authorize compromise by drainage districts, of delinquent drainage taxes, nor does any other statute so authorize. The powers of drainage districts is defined in Thompson v. City of Malden, 118 S.W. (2d) 1059, l.c. 1063, as follows:

"* * * Their rights, powers and liabilities are specifically limited by the statutes that create them. * * *"

Thus in the absence of such statutory authority, it is our conclusion that such compromise is not permitted.

CONCLUSION

It is therefore, the opinion of this office that a drainage district is not entitled to participate in the distribution of the surplus of proceeds received from lands sold by a county trustee under the provisions of Section 140.260, RSMo 1949, and that a drainage district does not have the authority to compromise delinquent drainage taxes.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

PMcG:vlw