TAXATION: Amount bid upon and paid for land that does not exist,
TAX SALE: at delinquent tax sale, may be repaid, with interest, to the purchaser by the county court.

FILED
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December 22, 1947

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Honorable Robert L. Borberg
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading as follows:

> "A sale of real estate for delinquent taxes was held Nov. 5, 1945, and was bid upon and bought in good faith by Purchaser for the sum of $66.68, which amount included cost of sale, back taxes, and interest. The Collector made distribution of the funds received. The real estate purportedly sold does not exist, it having been erroneously described on the tax books for a number of years.
>
> "Purchaser has made demand upon Franklin County for the refund of his money.
>
> "Question 1. Is County legally obligated to refund to Purchaser?
>
> "2. If the answer to '1' is 'no,' can County legally reimburse purchaser, expunging its moral responsibility?
>
> "3. Does the error impose any legal liability upon the County Officers making the error?
>
> "The Collector and County Court respectfully request opinions as to the above questions."

Section 11155, R. S. Mo. 1939, provides as follows:

> "Whenever the county collector shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever, invalid, he shall not convey such lands; but the purchase money and the interest thereon shall be refunded out of the county treasury to the purchaser, his representatives or assigns, on the order of the county court. Such invalid sale shall suspend for the period intervening between the date of the sale and the discovery of its invalidity the running of the statute of limitations. In such cases the county collector shall make an entry opposite to such tracts or lots in the record of certificates of purchase issued or redemption record that the same was erroneously sold, and the cause of invalidity, and such entry shall be prima facie evidence of fact therein stated. He shall notify the county clerk of such action, whose duty it shall be to make a like entry upon his sale record."

Section 11156, R. S. Mo. 1939, provides 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."

The sale held November 5, 1945, was an invalid sale because there was no power in any taxing authority to tax nonexistent land. Under the provisions of Section 11155, if no conveyance of the purported land has been made, the money should be refunded as provided in such section. While the provision in Section 11156, that 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, applies to land of the state, counties

or other political subdivisions, etc., we believe that such provision also applies to nonexistent land, since obviously such purported land would not be liable to taxation. Therefore, even if a purported conveyance of the nonexistent land had been made, under the provisions of Section 11156, the money should be refunded by order of the county court. We are enclosing a copy of an official opinion of this department rendered under date of July 29, 1943, to John W. Mitchell, which sets out the proper procedure and funds out of which such payment should be made.

CONCLUSION

It is the opinion of this department that where nonexistent land has been assessed for taxation in the county and a sale for delinquent taxes on such nonexistent land has been held, that under the provisions of Sections 11155 and 11156, R. S. Mo. 1939, the county court should refund to the purchaser at such invalid sale the money paid by the purchaser, with interest.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR