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THE NEW DELINQUENT LANDS STATUTE

CLYDE L. COLSON*

In the space of a few pages it will be impossible to do more than point out some of the more important changes made by the recently enacted statute dealing with the collection and enforcement of property taxes.¹ Many minor changes were made which can only be determined by a detailed comparison of the old and the new statutes. For the purpose of such comparison it should be pointed out that the new chapter eleven-A of the Code is a recodification and revision of articles nine and ten, chapter eleven, and of article three, chapter thirty-seven of the Code. Generally speaking, article one of the new chapter is part of article nine, chapter eleven; article two is the rest of the same article; article three takes the place of article ten, chapter eleven; and article four is substituted for article three, chapter thirty-seven.

Some of the comparatively minor changes were necessary to make the procedure conform to the recent constitutional amendment in respect to separate assessment of undivided interests.² For example, all of the redemption sections provide for the redemption of an undivided interest whether it had been separately assessed or had been included in a group assessment.³ It was also necessary to make some changes in conformity with the present practice of collecting taxes in two instalments.⁴

1. *Publication Charges.* Some rather important changes were made in respect to the expense of publishing the various lists and in respect to payment of the costs of such publication. Under the former statute the county was required to bear the expense of publishing the July delinquent lists⁵ and no charge was made against the delinquent taxpayer for such publication. Under the new statute a charge of one dollar is added to the taxes and interest due on each item listed to reimburse the county for its expense in preparing, publishing and posting the list.⁶ In respect to the November list of delinquent lands to be sold at the sheriff's

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¹ Enrolled House Bill No. 269, passed March 6, 1941, approved by the Governor, and effective from passage. This bill, which added a new Chapter 11-A to the Code of West Virginia, has not yet been officially published. Consequently, it can be cited only by reference to particular sections and articles of Chapter 11-A. All citations of the former statute are to W. VA. CODE (Michie, 1937).

² W. VA. CONST. art. XIII, § 6.

³ For instance, see c. 11-A, art. 2, § 18.

⁴ As in c. 11-A, art. 1, § 8.

⁵ C. 11, art. 9, § 22.

⁶ C. 11-A, art. 2, § 13.

sale, and the sales list published after the sale, the entire expense is now borne by the county,⁷ whereas formerly the cost of such publication in respect to the lands sold to the state was paid by the auditor out of the School Fund.⁸ To reimburse the county, however, a charge of two dollars in respect to each publication is added to the amount already due.⁹ In the case of lands redeemed from the auditor, the publication charges collected by him will be returned to the county.¹⁰ It is contemplated that out of the total of five dollars in charges, which will thus be owing in respect to each tract if all three publications are made, the county will be able to collect at least enough to cover the cost of the three publications.

2. *When Individual Purchaser Entitled to Deed.* Under the former statute, for one year following the sheriff's sale during which time the former owner had a right to redeem, the purchaser could not request a deed. Within the next six months he was required to satisfy the conditions in respect to survey and service of notice to redeem and, having done so, could demand his deed.¹¹ Instead of having this six-month's period within which the time for demanding the deed was indefinite the new statute substitutes specific dates. After purchasing at the sheriff's sale the purchaser does nothing until January first of the second year following the sale, and then between January first and March first of that year he is required to obtain his survey or report and to have notice served on those entitled to redeem.¹² If the property is not redeemed by May thirty-first, the purchaser becomes entitled to his deed on June first.¹³

In article four, following the circuit court sale, it was impossible to fix a definite date for obtaining the deed because the date of the sale is itself indefinite.¹⁴ All that could be done was to provide that the purchaser would be entitled to his deed upon confirmation of the sale.¹⁵ Application for confirmation may be made three months from the day on which the service of the notice to redeem was ordered.¹⁶ The purchaser is, however, re-

⁷ November list, c. 11-A, art. 3, § 2; sales list, c. 11-A, art. 3, § 41.

⁸ November list, c. 11, art. 10, § 4; sales list, c. 11, art. 10, § 40.

⁹ See note 7, *supra*.

¹⁰ C. 11-A, art. 3, § 14.

¹¹ C. 11, art. 10, §§ 12 and 16.

¹² C. 11-A, art. 3, § 20.

¹³ C. 11-A, art. 3, § 23.

¹⁴ C. 11-A, art. 4, § 14.

¹⁵ C. 11-A, art. 4, § 40.

¹⁶ C. 11-A, art. 4, § 36.

quired to apply for confirmation of the sale within sixty days after the first day on which he could have applied. Upon failure to make the application within sixty days, the purchaser loses his right to the deed.¹⁷

3. *Right of Redemption.* Under the former statute there was a right of redemption for one year after the sheriff's sale.¹⁸ In the case of a sale to a private purchaser, the former owner had another chance to redeem when within the next six months the purchaser requested his deed.¹⁹ In the case of a sale to the state the purchaser's right to redeem was revived when the auditor published his list of lands to be certified to the circuit court for sale.²⁰ Under the new statute the right to redeem is a continuous one until it is finally terminated. In the case of a sale to an individual purchaser at the sheriff's sale, the right to redeem expires on the last day of May of the second year following the sale.²¹ In the case of lands sold to the state, the right of redemption continues until confirmation of the circuit court sale.²² There is thus avoided the necessity for repeated extensions of the right to redeem, if in the future circuit court sales should again be suspended.

4. *Right to Have Property Revalued before Redemption.* It may often happen, and did happen many times during the past ten years, that the value of property at the time of redemption is substantially different from its last assessed valuation. With the exception of a short period when one of the moratoria acts permitted a revaluation,²³ it was impossible under the former statute to have the property revalued for the years following the original delinquency. The new statute provides that whenever "because of damage to the property or the making of improvements thereon, or because of a general change of property values in the county, or for any other reason,"²⁴ the value of the property has changed, the person redeeming or the auditor may request a revaluation of the property for any year or years since the sale.

The new valuation is to be made by the assessor and when approved by the county court shall be used by the auditor in

¹⁷ C. 11-A, art. 4, § 40.

¹⁸ C. 11, art. 10, § 12.

¹⁹ C. 11, art. 10, § 16.

²⁰ C. 37, art. 3, § 8.

²¹ C. 11-A, art. 3, § 17.

²² C. 11-A, art. 3, § 8.

²³ W. Va. Acts 1939, c. 61.

²⁴ C. 11-A, art. 3, § 11.

computing the amount necessary for redemption. For the purpose of approving such revaluations, the county court may act as a board of review and equalization at any of its regular or special sessions. This provision for revaluation should in all cases where the value of the property has decreased, make it easier for the owner to redeem. On the other hand, if the value of the property has increased, the former owner in order to redeem will be required to pay taxes in the same proportion as other owners whose property did not become delinquent.

5. *Redemption of Part of a Tract.* Under the former statute, in the case of lands sold to the state, the owner had an absolute right to redeem part of the tract.²⁵ It often happened that he would redeem only the valuable part of the tract, leaving the state to hold the worthless part with little chance to dispose of it for the taxes due. Under the new statute redemption of a part of a tract or lot is permitted only if, in the opinion of the auditor, the state as owner of the whole tract or lot would not be prejudiced by such partial redemption.²⁶

6. *Compulsory Payment and Redemption.* As was the case under the former statute, present article two provides that the sheriff may compel payment of delinquent taxes by suit,²⁷ by distraint,²⁸ or by informal garnishment proceedings.²⁹ In the case of collection by garnishment, the sheriff may notify any person who owes money to, or holds property for, the delinquent taxpayer to pay the taxes out of such money or property. One change that was made in respect to this proceeding was to provide expressly for collection from any person who is now, or who in the future will become, indebted to the delinquent taxpayer "for any rent, issue, delay rentals, gas well rentals, or royalties of any kind,"³⁰ thus making it clear that the sheriff may demand payment from coal, oil or gas lessees, or from the holders of timber rights.

A desirable change was made in this connection in article three. The auditor, in the case of land sold to the state, is given authority to compel redemption by the use of any of the methods provided in article two for collection of delinquent taxes by the sheriff.³¹ Thus it will be possible for the auditor to prevent the

²⁵ C. 11, art. 10, § 32.

²⁶ C. 11-A, art. 3, § 13.

²⁷ C. 11-A, art. 2, § 2.

²⁸ C. 11-A, art. 2, §§ 3-6.

²⁹ C. 11-A, art. 2, § 7.

³⁰ *Ibid.*

³¹ C. 11-A, art. 3, § 12.

repetition of a practice which in the past has been costly to the state. The owner of property, largely valuable because of its timber or minerals, would allow it to go delinquent and be sold to the state. Then, relieved of the necessity of paying taxes, he would continue to collect for mining or timber operations on the property. After all the timber had been cut or the minerals depleted, he would simply forego his right to redeem the property, and thus leave the state holding the bag. Under the new statute the auditor by use of the informal garnishment proceeding can compel redemption of the property by collecting from the one holding the mineral or timber rights.

7. *Tax Records.* In order to improve the tax records in the state, the statute now requires the clerk of each county court to keep a record of all delinquent lands within his county.³² When a piece of property has been included in the July delinquent list, it is entered by the clerk on his record of delinquent lands. Thereafter every step which is taken in respect to the land in subsequent tax enforcement proceedings is required to be entered by the clerk on this record. Thus it will be possible for anyone wishing to learn the tax status of delinquent property to turn to this record and on one page find the complete current tax history of the property. This does not mean that the necessity of looking at the original records has been dispensed with, but it does mean that lawyers will have a quick and ready index to the original records, and should thus save much of the time now required for a search of the tax records.

8. *Release of Taxes and Interest.* Because of the fact that many of the former school land commissioners failed to keep adequate records and to make reports to the auditor, there is great uncertainty and confusion existing in the auditor's record of delinquent lands in respect to lands purchased by the state for non-payment of taxes for years prior to 1929.³³ It has been discovered that in many instances property which appeared on the auditor's record as unsold and unredeemed had in fact been redeemed from or been sold by the school land commissioners. It would have been impossible for the auditor to certify such lands for circuit court sale with any assurance that the property should really be sold.

³² Although there is no specific provision requiring the clerk to keep this record, there is a clear implication that he is required to do so. This implication arises from the many provisions making it his duty to enter various notations on the record. For example, see c. 11-A, art. 3, §§ 9 and 18.

³³ ANNUAL REPORT OF THE AUDITOR OF STATE (1939) 12-14.

In order to make secure the title of those who redeemed or purchased from the former school land commissioners, two steps were taken. In the first place, there is a curative provision confirming all prior circuit court sales and curing any defects which may have been present in the proceedings.³⁴ In the second place, all taxes due on real estate for the assessment year 1928 and for all years prior thereto have been released. If no delinquency has occurred since 1928, the state's title to any such property is also released. If, however, in respect to lands purchased by the state for nonpayment of any pre-1929 taxes, there are taxes due for 1929 or for any subsequent year, the state retains its title and the lands will be certified to the circuit court for sale for the taxes due. As an additional incentive to redemption the statute also releases all interest, fees, penalties and costs for the assessment years 1929 to 1932 inclusive.³⁵

In passing, it may be of interest to note that more than a hundred years ago Virginia was faced with a similar problem. Due to many overlapping patents it often happened that there were several claimants to the same property. Some had forfeited their rights for nonentry or had allowed the property to become delinquent and be purchased by the state. The records were in such a state of confusion that the legislature decided that the only way to clear up the matter was to forego all taxes prior to a certain date, and thus having wiped the slate clean, make a fresh start from that point.³⁶

9. *New Procedure for Circuit Court Sale of Lands for Benefit of School Fund.* By far the most fundamental change was the substitution of a new administrative procedure in the circuit court sale of lands for the benefit of the school fund in place of the former cumbersome and expensive judicial proceeding which, in effect, was nothing more than a bill in equity to quiet title for the benefit of the former owner or the new purchaser at the expense of the state. The new procedure purports to do no more than convey to the purchaser such derivative title as the state may have acquired upon forfeiture of the land for nonentry or upon purchase by the state at the sheriff's sale.³⁷

As an original proposition there might seem to be serious question as to the constitutionality of the new procedure which

³⁴ C. 11-A, art. 4, § 52.

³⁵ C. 11-A, art. 4, § 54.

³⁶ Va. Acts 1831-1832, c. 72 and c. 73.

³⁷ C. 11-A, art. 4, § 1.

requires administrative rather than judicial action by the circuit court. It might be argued that this violates our constitutional provision in respect to separation of powers.³⁸ Fortunately, however, this question has already been settled in favor of the validity of the statute. The new procedure is merely a readaptation of the circuit court sale as it was originally established in this state. In commenting on the procedure provided for in the original statute and in pointing out that the constitution itself authorizes such administrative action by the circuit court,³⁹ our supreme court said:

“These authorities indicate that the acts of the court in ordering and confirming sales are merely *ex parte* and not judicial proceedings in the sense that they involve litigation or the determination of a controversy between adverse parties. They are in my opinion more in the nature of administrative and *ex parte* proceedings—such as orders and entries made by courts in transacting the police and fiscal matters of a county—than they are in the nature of judicial controversies. They are merely a mode provided by the State for effecting the sale of lands which are her absolute property. She being a corporate body can act only by agents duly appointed by her. The commissioner and the court are her agents appointed for that purpose. The constitutional and statutory provisions, authorizing and declaring the manner of making these sales, are in effect a power of attorney or commission appointing and conferring upon the court and commissioner the authority to sell them,”⁴⁰

In respect to the administrative machinery under the new statute the auditor remains in charge as state commissioner of forfeited and delinquent lands,⁴¹ but provision is made for the appointment in each county of a deputy commissioner of forfeited and delinquent lands.⁴² This marks a return in part to our former practice of having a commissioner of school lands in each county. An effort was made to make the procedure in respect to the circuit court sale conform as nearly as could be to the procedure before and after the sheriff's sale. In January of each year the auditor will certify to the circuit court of each county all lands in the county which have been in his hands as state commissioner of

³⁸ W. VA. CONST. art. V, § 1.

³⁹ W. VA. CONST. art. XIII, § 4.

⁴⁰ McClure v. Maitland, 24 W. Va. 561, 579 (1884).

⁴¹ C. 11-A, art. 4, § 4.

⁴² C. 11-A, art. 4, § 5.

forfeited and delinquent lands for one year or more.⁴³ After such certification, redemption must be from the deputy commissioner.⁴⁴ Within thirty days after certification the deputy commissioner is required to apply to the circuit court for an order fixing a date for the sale and a date for publication of the notice of sale and for publication of the list of lands to be sold.⁴⁵ The list and the notice are to be published once a week for two consecutive weeks,⁴⁶ and the date of sale is to be not less than sixty nor more than ninety days after the first publication.⁴⁷ All property not redeemed before the date fixed for the sale will be sold by the deputy commissioner for the amount of taxes, interest and charges due on that date.⁴⁸

In the case of a sale to an individual, the purchaser is required within sixty days after the sale to file with the clerk of the circuit court a report and description of the property purchased; to examine the title for the purpose of preparing a list of those to be served with notice to redeem; to apply to the court for an order directing preparation and service of the notice; and to deposit with the clerk of the court a sum sufficient to cover the costs of preparing and serving the notice.⁴⁹ The notice will state that unless the property is redeemed after a named date, which is to be three months after the day on which service of the notice was ordered, the sale will be subject to confirmation by the circuit court on or after that date. If the property is not redeemed by the date specified in the notice, the purchaser may apply to the court for confirmation of the sale at any time within sixty days after the date for confirmation named in the notice. Upon confirmation all right of redemption is terminated and the purchaser becomes entitled to his deed.⁵⁰

If no person present at the sale bids the amount due, the deputy commissioner will purchase the property for that amount for the Public Land Corporation.⁵¹ In such case he is required to prepare the list of those entitled to notice and to apply to the court for an order directing the clerk to prepare and serve the

⁴³ C. 11-A, art. 4, § 9.

⁴⁴ C. 11-A, art. 4, § 10.

⁴⁵ C. 11-A, art. 4, § 14.

⁴⁶ C. 11-A, art. 4, § 16.

⁴⁷ C. 11-A, art. 4, § 14.

⁴⁸ C. 11-A, art. 4, § 21.

⁴⁹ C. 11-A, art. 4, § 32.

⁵⁰ C. 11-A, art. 4, § 40.

⁵¹ C. 11-A, art. 4, § 23.

notice.⁵² As in the case of a sale to an individual, if the property is not redeemed before confirmation, all right of redemption is terminated.⁵³

One of the most important advantages of the new procedure will be the great saving in time. Instead of the two or three years normally required for the proceedings in the former circuit court sale, under the new statute there should in the ordinary case be less than a year from the date of certification by the auditor to the date of confirmation of the sale by the circuit court.

10. *Title Acquired by Purchaser.* Another fundamental change is in respect to the title acquired by an individual purchaser at the sheriff's sale under article three and by an individual purchaser or the Public Land Corporation, under article four. In article three, instead of specifying certain defects which shall not affect the validity of the title acquired by the purchaser, as was the case under the former statute,⁵⁴ an effort has been made to change the emphasis and provide that the purchaser shall acquire the title of any person entitled to redeem unless the rights of such person are expressly saved under the provisions of the statute, or unless the person entitled to redeem is one who is required by law to have his interest separately assessed and who having done so has paid all taxes due on his interest.⁵⁵ This latter provision was necessary in order to protect those claiming the benefit of the doctrine of the *Black Band* case.⁵⁶ Paralleling these provisions of article three are similar provisions in article four in respect to the title acquired at the circuit court sale by the individual purchaser or by the Public Land Corporation.⁵⁷

Unless the legislative purpose in respect to the title acquired is given effect by our court, it will be impossible to accomplish the declared policy of the legislature to provide a speedy method for enforcement of tax claims and at the same time to make secure the title of the new owner by finally disposing of all claims of the former owner.⁵⁸

⁵² C. 11-A, art. 4, § 33.

⁵³ C. 11-A, art. 4, § 40.

⁵⁴ C. 11, art. 10, § 22.

⁵⁵ C. 11-A, art. 3, § 28.

⁵⁶ *State v. Black Band Consolidated Coal Co.*, 113 W. Va. 872, 169 S. E. 614 (1933).

⁵⁷ C. 11-A, art. 4, § 43.

⁵⁸ C. 11-A, art. 3, § 1.