

# The taxman's notices cometh

August is the time of year when county collectors get busy on the annual tax lien sale. Missouri allows counties to place a lien on real property, after three years of non-payment of county-assessed taxes, and the lien is then sold on the courthouse steps for the sum of the unpaid three-year tax bill. State law sets out procedures for one who buys the lien to collect interest on the unpaid lien and, eventually, to claim ownership of the land via a quiet-title action in circuit court in the county.

All of you have seen the legal notice that runs before those sales – three times before mid-August, with the sale to be held on the fourth Monday in August. If you are a legal notice paper (in some cases, the ONLY legal notice paper) in your county, you are well aware of that notice showing up in late July as this process begins. Well, that was not the case for one paper in this state in late July.

It isn't important what paper it was. What is important is that the paper, the solely qualified legal notice paper in the county, discovered the notice being published, with no advance warning, in a total-market-circulation publication in the county, instead.

State law is very clear as to the process involved in this sale. Section 140.170 of the Missouri statutes states: "Except for lands described in subsection 7 of this section, the county collector shall cause a copy of the list of delinquent lands and lots to be printed in some newspaper of general circulation published in the county for three consecutive weeks, one insertion weekly, before the sale, the last insertion to be at least fifteen days prior to the fourth Monday in August."

The key to this is not in this statute. It's actually in Section 493.050, what we as an association call the "legal notice statute." It says, as most of you well know:

"All ... legal publications affecting the title to real estate shall be published in some daily, triweekly, semiweekly or weekly newspaper of general circulation in the county where located and which shall have been admitted to the post office as periodicals class matter in

the city of publication; shall have been published regularly and consecutively for a period of three years ...; shall have a list of bona fide subscribers ..., who have paid or agreed to pay a stated price for a subscription for a definite period of time...."

Those three specific qualifications are what sets apart "legal notice papers" from other publications in your town. And this requirement is further supported by Section 493.055, which goes on to say, "All ... legal publications affecting the title to real estate, shall be published in a newspaper of general circulation, qualified under the provisions of section 493.050 ...."

That's pretty clear. But apparently there is one county collector in the State of Missouri who either didn't understand when that person read the instructions given to collectors, or who for personal reasons chose to place the ad in a non-legal notice paper.

The local paper noticed the ad was published in a non-legal notice paper and had a lawyer well-versed in legal notice law send a detailed letter setting out all these facts in a letter to the collector, advising that it was critical to move the second and third publications into a proper legal notice paper, while noting that the paper had no advice as to whether if even doing that would protect the county collector from a suit against them over the error in the legal process that had already taken place.

The county has a legal right to do what the state statutes set out. When it does it erroneously, it puts a cloud on the title of the landowner

that is wrongfully done and therefore defective. Perhaps such an action would make the landowner entitled to some kind of damages against the county, perhaps even punitive damages. I am not aware that this issue has ever been addressed by a court in Missouri but it seems to me that a county collector

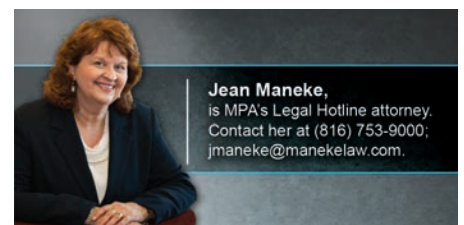
would not want to put his or her office in a position of creating that potential liability due to their wrongful actions.

What lesson can we learn at this point? Well, the outcome in this situation will tell us eventually. In the meantime, perhaps it's just a reminder that each of us need to work hard to be sure county officials in our area understand not only the importance of legal notices but

which ones go where. I have often told our members, in response to questions about whether the county or city is properly requesting publication of a notice, that our job is to publish what they ask us to publish and not to offer unsolicited legal advice to those making the request, in order to protect papers from giving out wrong legal advice.

It should not be up to the local paper to educate the public officials in their jobs. But it certainly is a tragedy when a public official creates liability for the county because they didn't do their job correctly.

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