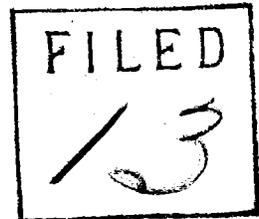


COUNTY COURTS: County court can refuse to pay for
OFFICERS: publishing notice to delinquent
COUNTY COLLECTORS: personal taxpayers that a suit would
be filed against them for personal taxes.

August 6, 1941

Mr. Bill Burke
Collector of the Revenue
Stone County
Galena, Missouri



Dear Sir:

We are in receipt of your request for an opinion dated August 4, 1941, which reads as follows:

"Early in the summer of this year I carried notices in the County papers, instructing the personal taxpayers of Stone County that suit would be started on all unpaid personal taxes, July 15th, 1941.

"The Stone County Court has refused to pay the publishers for the notices, and included in my 1941 budget is-- \$100.00 advertising.

"Is there any law in the Missouri statutes that compels the County to pay for such notices?"

Section 11110 R. S. Missouri 1939, sets out that delinquent taxes should be placed in two separate books; one book shall contain the personal delinquent list, and the other book shall contain the land delinquent list.

Section 11112, R. S. Missouri 1939, sets out the method of collecting delinquent personal taxes. This section partially reads as follows:

"Personal taxes assessed on and after June 1st, 1887, shall constitute a debt for which a personal judgment may be recovered before a justice of the peace or in the circuit courts of this state against the party assessed with said taxes. All actions

commenced under this law shall be prosecuted in the name of the state of Missouri, at the relation and to the use of the collector and against the person or persons named in the tax bill, and in one petition and in one count thereof may be included the said taxes for all such years as may be delinquent and unpaid, and said taxes shall be set forth in a tax bill or bills of said personal back taxes duly authenticated by the certificate of the collector and filed with the petition; and said tax bill or tax bills so certified shall be prima facie evidence that the amount claimed in said suit is just and correct, and all notices and process in suits under this law shall be sued and served in the same manner as in civil actions before justices of the peace and in circuit courts, and the general laws of this state as to practice and proceedings and appeals and writs of error in civil cases shall apply, as far as applicable, to the above actions. Said actions shall be prosecuted by attorneys employed as provided in article 9 of this chapter of the general statutes, and the fees and compensation allowed in said article shall apply to the above actions:

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Nothing is stated in the above partial section as to the requirement of a notice in any manner to a person who owes delinquent personal tax. No notice is required before the suit is filed under this section.

Section 11113, R. S. Missouri 1939, provides for a notice by registered mail before a suit shall be brought to recover delinquent personal taxes, but this section only applies to counties having a population of more than eighty thousand and less than one hundred fifty thousand, in which circuit court is held not more than one place.

This section does not apply to Stone County.

Section 11079, R. S. Missouri 1939, does not apply to delinquent taxes but merely provides that the collector shall give not less than twenty days' notice of the time and place at which they will meet the taxpayers of their respective counties, and collect and receive their taxes. This notice may be given by posting up at least four written or printed handbills in different parts of each municipal township in said counties, and by publication for two weeks in a newspaper, if one be published in the county which notice shall specify the places and the number of days that he will remain in each place. Under this section the county court may relieve the collector from visiting any municipal township in the county by an order of record before the notice is given. This section does not apply to delinquent personal taxes but only applies to taxes due that are not delinquent.

Section 11126, R. S. Missouri 1939, partially reads as follows:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. And it shall only be necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost due thereon, each year separately stated, and the land therein described shall be described in forty-acre tracts or other legal subdivision, and the lots shall be described by number, block, addition, etc.: * * * * *"

The above section does not apply to personal property and only applies to delinquent land taxes.

Since it is not the duty of a county collector to

publish notice of personal delinquent property taxes any contract for the publishing would be void and the county court cannot be compelled to pay for such publishing.

Article VI of Section 36 of the Constitution of Missouri reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

In construing this section the Supreme Court of this state in *Nodaway County v. Kidder*, 129 S. W. (2d) 857, paragraphs 2-4, said:

"County courts are courts of record, created and given jurisdiction to transact all county business, and to audit and settle all demands against the county. Article 6, section 36, Constitution of Missouri, Mo. St. Ann. Sec. 2078, R. S. Mo. 1929, Mo. St. Ann. section 2078, p. 2658. The above statute providing for settling and auditing claims against the county applied only to lawful demands and does not authorize the county court to audit and settle claims arising on void contracts. *Hillside Securities Co. v. Minter*, 300 Mo. 380, 397, 254 S. W. 188, 193. A County Court does not act judicially in auditing and approving claims presented against the county, or in auditing warrants issued in payment thereof, and its action is not final in the sense that a judgment of a court is final. *Jackson County v. Fayman*, 329 Mo. 423, 44 S. W. 2d 849, 852; *State ex rel. West v. Diemer*,

255 Mo. 336, 351, 164 S. W. 517, 521. The fact that said statements, presented by Judge Kidder, were audited and allowed by the County Court, and that warrants were ordered to be issued in payment of said statements, was not binding on plaintiff."

Under the above holding it specifically held that the statute providing for settling and auditing claims against the county applied only to lawful demands and does not authorize the county court to audit and settle claims arising on void contracts. The court in that case in paragraphs 5-7, further said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

The above holding specifically held that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. Under the facts stated in your request there was no provision

authorizing the publishing of delinquent personal taxes and any contract made by the collector of revenue would not be binding upon the county court. In the case of Jackson County v. Fayman, 44 S. W. (2d) 849, paragraph 1, l. c. 852, the court said:

"By our Constitution, county courts are created and are given jurisdiction to transact all county business. Article 6, section 36. By statute, section 2078, R. S. 1929, such courts are given power 'to audit and settle all demands against the county.' And section 12162, R. S. 1929, provides that 'the county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts.' The county court, when it ascertains any sum of money to be due from the county, shall order the clerk to issue a warrant in a prescribed form. Section 12163, R. S. 1929. And the county treasurer 'shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court.' Section 12136, R. S. 1929."

The above holding construed Article VI, Section 36 of the Constitution as to the power of the county court to audit and settle all demands against the county.

In your request you state that One Hundred Dollars was allowed in your 1941 budget for advertising. It is presumed that the One Hundred Dollars allowed in your budget for advertising was for lawful advertising, such as notice to taxpayers whose taxes are not delinquent to appear at a certain place and time to pay the collector, and is also for the purpose of paying the legal advertisement of delinquent land taxes.

Mr. Bill Burke

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August 6, 1941

CONCLUSION

In view of the above authorities it is the opinion of this department that the Stone County Court cannot be compelled to pay the publishers of a notice to delinquent personal taxpayers that a suit would be started on all unpaid personal taxes July 15, 1941.

Respectfully submitted

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APPROVED:

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