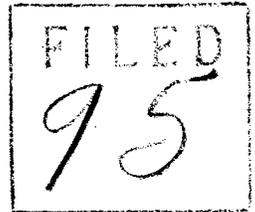


COUNTY: Expense of publishing list of delinquent tax lists shall be paid out of the county treasury, and the cost of same shall be taxed as a part of the costs of the sale.



October 18, 1947

Honorable Joe C. Welborn
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri

Dear Mr. Welborn:

Your opinion request of recent date reads as follows:

"Section 11126, R. S. No. 1939, provides for the publication of a list of delinquent lands and a notice of the time and place of sale of such lands for taxes. It is further provided that: 'The expense of such printing shall be paid out of the County Treasury....which cost of printing.....shall be taxed as part of the costs of the sale of any land or list contained in such list.' Other sections in the same article provide for the lands being sold for such amount as will satisfy the amount of taxes, interests, and costs.

"The question has arisen, whether the publisher, publishing the above lists must take a Fifth Class Warrant for such printing or whether he may be paid from the proceeds of the tax sale. It is apparent that Stoddard County may not be able to meet all its Class Five obligations this year and if this is true, the publisher of the delinquent tax lists may have to go without being paid, although money has been paid to the collector for the publication costs.

"We would appreciate an official opinion from your office on the above matter."

The pertinent part of Section 11126, R. S. No. 1939, referred to in your opinion request 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 * * *. The expense of such printing shall be paid out of the county treasury and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed one dollar for each description, which cost of printing at the rate paid by the county shall be taxed as part of the costs of the sale of any land or lot contained in such list."

In the construing of statutes some primary rules of interpretation have long been announced by the courts. One of the most elementary rules of construction is that effect is to be given to the legislative intent when construing a statute. *Meyering v. Miller*, 51 S.W. (2d) 65, 330 Mo. 885, and other cases listed under Statutes, Missouri Digest, Volume 26, Key 180, 181(1), too numerous to list here. Another, equally as well established, rule of construction is that in construing statutes, words of common use are to be construed in their natural and ordinary meaning. *Bellerive Inv. Co. v. Kansas City*, 13 S.W. (2d) 628, and other cases under Statutes, Missouri Digest, Volume 26, Key 188.

With these two rules in mind let us reduce the above quoted statute to an ordinary statement, omitting the terminology and phrases which for our purpose may be considered as surplusage. The statement would then read, in its essence, that the county collector must publish a list of the lands and lots upon which the taxes are not paid, and that payment for that publication is to come out of the county treasury, but in order that the county not bear the burden of such cost, the charge of the publication is to be taxed as a part of the sale and the costs attendant thereon. If that statement is true it seems that it was the legislative intent to have the lists of delinquent taxes published and in order that the publisher be paid for his efforts, but in order not to burden the county, the cost of the publication was to be paid as part of the costs. The statute provides a clear and express method of payment for the cost of publishing the list of delinquent taxes against lands and lots. The statute is express when it states that the expense of the publication "shall be paid out of the county treasury." To act otherwise would violate the express terms of the statute.

The confusion, if any exists, seems to come from the fact that within one sentence the Legislature provided the method of payment and the method of providing for the cost. However, it has been repeatedly held that bad grammar, syntax or other language errors will not defeat the plain intent of the statute. When one separates the two items contained in the sentence, that is, the method of payment and the method of providing for the cost, from each other, it is manifest that the Legislature had two separate procedures under consideration.

In counties with a population of 50,000 or less, Sections 10910 to 10917, R. S. No. 1939, provide the exact method of a county meeting any indebtedness and the priority of claims against the county's revenue. Strict adherence to this budget law is necessary. The only alternative in the present situation would be the payment of the publication costs where one class of expenditures by the county has a surplus remaining in that class at the end of the fiscal year. This office has often held that the surplus in one class can be transferred to another class, a transfer being authorized by Section 10911, page 650, Laws of Missouri, 1941. This seems to be the only other method by which payment might be made, that is, if there is at the close of the fiscal year any surplus funds from any of the classes such surplus may be used. If there does not remain any surplus at the close of the year it will be necessary to take this item into account for the ensuing year.

Conclusion

In answer to your direct question, it is the opinion of this department that the publisher of delinquent tax notices must be paid out of the county treasury by warrant, and that the publisher may not be paid from the proceeds of the tax sale. Furthermore, it is the opinion of this department that where lists of delinquent taxes on lands and lots have been published according to the requirement of the statute, the expense of such printing shall be paid out of the county treasury, and the county shall levy as costs the amount of the charge of such publication.

Respectfully submitted,

APPROVED:

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