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DRAINS AND LEVEE DISTRICTS:

Power of County Collector
to accept warrants in
payment of drainage taxes.

9911 - 10788 - 10706 KS Mo 1729

July 31, 1933

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Honorable Joseph L. Gutting
Prosecuting Attorney
Kahoka, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of July 17, 1933 in which you request an opinion relating to the tax question of the Wyaconda Drainage District in your county. For convenience your letter is herein quoted:

"As advisor for The Collector of Revenues of Clark County, I wish to state the following set of facts and ask your opinion.

Wyaconda Drainage District #3 has defaulted in the payment of its past due bonds and necessarily a lot of the drainage taxes in said district are delinquent. One of the taxpayers in said district presented the collector with a warrant issued by the Board of Supervisors for the payment of his taxes and demanded that the collector accept said warrant for the payment of his drainage taxes. Under Section 9911 I directed the Collector not to accept the said warrant as payment of taxes for the reason that the said section 9911 R.S. Mo. 1929 states that past due bonds and coupons shall be accepted by the Collector in the payment of drainage Taxes but does not give him the right to accept warrants drawn on the district, said section mentions state warrants, county and city warrants but does not state that the Collector can accept warrants drawn on a drainage district for the payment of drainage taxes. This drainage district floated its bonds for its plan of reclamation but this was not sufficient to pay for the entire construction under the plan of reclamation so the district issued about seven thousand dollars in warrants which were purchased by individuals and the money derived

therefrom was used by the district to finish paying the contractors for digging the ditches. These warrants were issued several years ago and are unpaid, I believe that the issuance of these warrants were illegal, one of these warrants was the one that was presented for payment of taxes. Also this district does not have a maintenance tax and hasn't for years but calls its funds a general fund and this is the fund the warrants were drawn on.

Now the district has just more than enough installment tax money due from the collector to pay said warrant, but can this warrant be paid out of the money derived from taxation for the payment of maturing bonds? I think not under section 10788 R. S. No. 1929 and that the Collector cannot cash said warrant out of said funds nor can the Treasurer of the Drainage district be compelled to pay said warrant out of said funds nor accept it for the payment of taxes.

Supposing three taxpayers in said district buy a past due bond and present it for payment of all three of their taxes, (this also is presented to the collector) should the collector receive it in payment for the three the same as he would for one? I advised him that he should.

I would appreciate your opinion on the above questions."

At the outset we are handicapped in answering your questions for the reason that we cannot ascertain whether or not the Wyaconda Drainage District No. 3 was organized "under drainage districts by Circuit Courts" or "levee districts by county courts". Since you refer to sections in your letter relating to drainage districts by circuit courts, we are going to assume that the district in question comes under the laws governing drainage districts by circuit courts.

In the first portion of your letter you state that a taxpayer demands that the collector accept a warrant for the payment of his drainage taxes; under Section 9911 R. S. of Missouri, 1929, governing "collectors and collections of taxes, which is as follows:

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"Except as hereinafter provided, all state, county, township, city, town, village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes. Warrants drawn by the state auditor shall be received in payment of state taxes. Jury certificates of the county shall be received in payment of county taxes. Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose. Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant; but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, or there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county or city for that year."

This Department agrees with you in having given your opinion that only "past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue but not in payment of any tax levied for any other purpose. In this statute the law is plain - - it states definitely just what a collector may receive in payment of the taxes levied and then states definitely the kind of warrants that may be accepted by the collector, and does not include warrants of this character.

You further state that the drainage district, after it had floated its bonds, the same being insufficient to pay for the entire construction, issued \$7,000 in warrants. Bearing in mind that this is a district organized by circuit court procedure, there is no section which gives the board authority to issue warrants for the purpose of constructing drainage projects or their completion.

We therefore hold that these warrants are not valid for the reason that there is no authority for the issuance of same.

Section 10788 R. S. of Missouri 1929 sets out the powers of the Board of Supervisors in regard to issuing bonds, said section being as follows:

"The board of supervisors may, if in their judgment it seems best, issue bonds not to exceed ninety per cent. of the total amount of the taxes levied under the provisions of section 10759 of this article, in denominations of not less than one hundred dollars, bearing interest from date at a rate not to exceed six per cent. per annum, payable semi-annually, to mature at annual intervals within twenty years, commencing after a period of years not later than five years, to be determined by the board of supervisors, both principal and interest payable at some convenient banking house or trust company's office to be named in said bonds, which said bonds shall be signed by the president of the board of supervisors, attested with the seal of said district and by the signature of the secretary of the said board. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of supervisors may deem necessary to meet the payments for the works and improvements in the district. Said bonds shall not be sold for less than ninety-five cents on the dollar, with accrued interest, shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the aforesaid taxes.

A sufficient amount of the drainage tax shall be appropriated by the board of supervisors for the purpose of paying the principal and interest of the said bonds and the same shall, when collected, be preserved in a separate fund for that purpose and no other. All bonds and coupons not paid at maturity shall bear interest at the rate of six per centum per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment and the said interest shall be appropriated by the board of supervisors out of the penalties and interest collected on delinquent taxes or any other available funds of the district. Any expense incurred in paying said bonds and interest thereon and a reasonable compensation to the bank or trust company for paying same, shall be paid out of other funds in the hands of the treasurer and collected for the purpose of meeting the expenses of administration. It shall be the duty of said board of supervisors in making the annual tax levy, as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make ample provisions in advance for the payment thereof. In case the proceeds of the original tax levy made under the provisions of section 10759 of this article are not sufficient to pay the principal and interest of all bonds issued, then the board of supervisors shall make such additional levy or levies upon benefits assessed as are necessary for this purpose, and under no circumstances shall any tax levies

be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same* * * * *. * * * * The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the drainage works and improvements and such costs, expenses, fees and salaries as may be authorized by law and used for no other purpose."

This section is definite and does not give the Board of Supervisors power to use the money for retiring bonds to use for purposes of meeting the expenses of administration, or to issue warrants in lieu of bonds. We hold this to be the opinion of this Department unless the Wyaconda Drainage District later reorganized under Section 11009 R. S. of Missouri 1929, which is as follows:

"Any levee district now organized or existing under the provisions of any other law of this state either general, special or local law, may, elect in the manner hereinafter provided to be and become organized under the provisions of this article: Provided, that no such election or change or organization shall have the effect to repudiate or to permit the repudiation of any indebtedness or liability of such levee district which was made or incurred under its former organization, but all such indebtedness or liability shall attach to and become the debt or liability of the new organization till the same is fully paid off and discharged and all debts owing to, and all rights, privileges and immunities held or

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enjoyed by the old district under its former organization, shall be held and enjoyed by the new district when the same shall reorganize under the provisions of this article."

In that event warrants could have been issued under Section 10966, R. S. of Missouri 1929, which is as follows:

"The board of directors may, at its option, in lieu of bonds, issue warrants on the county treasurer, payable out of the funds of the levee district, in payment of any indebtedness incurred, including the entire expense of constructing the levee, repairing or extending the same."

The warrant in question would then be legal.

Under Section 10788 R. S. of Missouri 1929, which we have quoted above, this Department agrees with you in having given your opinion that the payment of the warrant in question cannot be made out of the funds for the retiring of the maturing bonds, as the statute is definite as to what shall be paid and what shall not be paid out of the various funds.

As to the last paragraph of your letter "supposing three taxpayers in said district buy a past due bond and present for all three of their taxes, should the collector accept it", under Section 9911 R. S. of Missouri 1929, which we have quoted at the beginning of this opinion, the county collector would have power to accept the past due bond in question in payment of drainage district taxes, and the fact that three taxpayers owned said bond and proffered it in payment of their taxes, the same should be acceptable. The fact that one or three may own the bond should make no material difference, so long as they are the legal holders of same.

In the event we have assumed the wrong facts, we would welcome a further letter from you.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

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