

TAXATION:--Expense of publication of list of delinquent lands not chargeable to County, Section 9952b.

9952 B Laws 33

August 18, 1933

N. S. Jackson

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The Missouri Democrat
911 Wyandotte Street
Kansas City, Missouri

Gentlemen:

We acknowledge receipt of your letters of July 31, and August 10, respecting the printing of the delinquent tax list in accordance with the provisions of Senate Bill 94, and wherein you request a ruling of this office as to the effect of section 9952b as contained in said bill. Your request dated July 31, reads as follows:

"John H. Ranson, County Collector of Jackson County, has taken up with us the matter of publishing the County's delinquent tax list, in accordance with the provisions of Senate Bill No. 94.

It is the opinion of the Collector that Section 9952b makes no provision for the payment of such advertisement except for that portion as may be sold in November. In other words, it is his interpretation that the Collector is not obligated to see that advertisement is paid for and that the county is in no wise responsible.

However, the Section mentioned does not seem in any way ambiguous to us. We interpret it to mean that the Collector is required by law to have the publication, and that at the completion of such advertisement it is his duty to approve the bill for same and order it paid by the County Treasurer. The treasury is then reimbursed as the property is sold. The last sentence in the Section, which is in parenthesis, leaves no room for doubt when it says 'and when such costs are repaid, they shall be returned to the county treasury'

Will you please give us a ruling on Section 9952b, so that the Collector may know how to proceed?"

We shall first refer to the Missouri Laws of 1933 containing this new section, and herewith quote to you portions of said Section found at page 430 and 431, which we deem pertinent to your inquiry.

" * * * The expense of such printing shall be paid by the purchaser or purchasers of the lands and/or lots sold and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed the legal rate for the entire notice, as such legal rate is fixed by Sec. 13773, which costs of printing at the rate specified shall be taxes as part of the costs of the sale of any land or lot contained in such list and disposed of at such sale, and the total cost of printing such notice shall be prorated against all such lands or lots so sold or redeemed prior to any such sale."

This section, as contained in my copy of the Laws of 1933 does not contain any clause, in parentheses or otherwise, reading as follows: "and when such costs are repaid they shall be returned to the County treasury." Our opinion accordingly is based upon the law as we find it in the Laws as published by the Secretary of State.

Before any County or City can lawfully enter into any contract or be charged upon any contract, it must be authorized by law and the contract made and the obligation created in the manner provided for by law. This is clearly put by Judge Walker in the case of Pulitzer vs. Gilbert, 216 Mo. 500 1. c. 537.

"The powers of a county as a subdivision of the State are clearly defined and limited by law, and its administrative agents, the members of the county court, have no authority except that clearly conferred by law."

Then too, we have a legislative enactment pertaining to this matter in Section 2962, R. S. No. 1939, portions of which read as follows:

"Section 3962. CONTRACTS, * * * *. No county, city, * * * * or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, * * * *."

The section above referred to has been the law of this State for some sixty years, and has been constantly referred to by the Courts in determining the liability of the County upon contracts of various kinds.

Senate Bill 94 contains no provision sufficient to authorize a charge against the County for costs of publishing of delinquent lists. The Act is entirely silent as to this item of expense, except for the portion underlined in the quotation above set out. No reference is made in the Act relating to the presentation of the bill for advertising to the County Court, or for any certification by the collector to the County Court that the bill is proper, nor is any provision made in the Act as to the fund from which the bill is to be paid. The only expression of legislative intent is found in the sentence, "the expense of such printing shall be paid by the purchaser" * * * of the land" * * *". The Act provides for the prorating of this expense to the lands contained in such list, and that such printing expense be taxed as part of the costs of the sale. It is apparent that the Act contemplates an assessment of the prorated portion of advertising expense to each lot offered for sale, and a collection of that assessment at the time of the sale as a part of the costs for the benefit of the publication publishing the delinquent list. This construction is consistent with the methods of procedure in collecting delinquent taxes in the past. The County or the State has never assumed any obligation for any costs incurred or accrued in the collection of delinquent taxes, but have at all times required the parties paying the tax or redeeming the property to pay the costs necessarily incurred, after which the various persons entitled to costs received the amount due them from the funds thus paid by taxpayer or person redeeming the property.

Our Courts, have in the past considered matters containing the same legal point as here involved. One of the earlier cases is that of Finney vs. Sullivan County, 48 Mo. 350. The facts in the case are briefly set out on page 351 as follows:

"This suit was brought to recover of Sullivan county (the defendant) the sum of \$2.76 for services rendered by the plaintiff in 1866, in attending before the board of registration in that county as a witness. It is admitted that the services charged were rendered in obedience to the requirements of a subpoena duly issued by the board and served upon the plaintiff. There is no dispute about the facts. The single question presented is whether the county, under the circumstances, is legally bound to pay the claim."

The Court in considering the question stated at page 352:

"In a word, the law makes no provision for the compensation of witnesses who are summoned to appear before registration boards. On what principle, then, is the county to be held liable for these fees? The registration officers were appointed by the supervisor of registration, who was appointed by the governor. They were not the agents of the county, nor was the county a party to the proceedings before the board. The county cannot be made liable for the fees or witnesses summoned to attend upon the registration officers, without some express statute on that subject imposing the liability, and there is no such statute. The county of Sullivan is therefore not liable for the plaintiff's claim."

Section 9952b is not as indefinite as the law considers in the above case, as it does make a provision for the publisher being paid at not more than the legal rate for printing, as provided by Section 13773, R. S. Mo. 1929.

In the later case of Miller vs. Douglas County, 205 Mo. 194, the Supreme Court considered the liability of the defendant County for an item of \$116.55 for medical services and drugs furnished prisoners in the County jail by the plaintiff Doctor. The Court in denying the right of the plaintiff to recover this sum considered Section 8134, R. S. Mo. 1899, which reads as follows:

"In case any prisoner confined in the jail be sick, and, in the judgment of the jailer, needs a physician or medicine, said jailer shall procure the necessary medicine or medical attention, the costs of which shall be taxed and paid as other costs in criminal cases; or the county court may, in their discretion, employ a physician by the year, to attend said prisoners, and make such reasonable charge for his services and medicine, when required, to be taxed and collected as aforesaid."

and stated as follows: l. c. 199.

"That section (8134) is authority for a jailer to procure the necessary medicine or medical attention to a sick prisoner in his custody. But it is expressly provided that the costs of such medical attention and medicines 'shall be taxed and paid as other costs in criminal cases.' Costs in criminal cases are taxed by the proper officers, are certified by fee bills under the official oaths of prosecuting attorneys and judges of the various circuit courts, and are paid either by the county or by the State, as the case may be, on such certified fee bills. (See art. 15, chap. 16, R. S. 1899.) Manifestly plaintiff cannot recover under section 8134."

The Statutes above considered, required that the plaintiff's charges be taxed as costs. In the instant case, Section 9953b likewise requires the expense of printing to be taxed as cost. That such expenses shall be paid as costs logically and necessarily follows:

That Counties are not liable except where statutes so provided, is recognized as the law in other states. The Supreme Court of Georgia in the case of Daniels, et al vs. Hutchinson, Tax Commissioner, 150 S. E. 681, 66 A. L. R. 793, had for determination the liability of the County for the premium for the bond of the Tax Commissioner. The Georgia Laws require the Commissioner to give bond and security to the Governor and to the Board of Commissioners of Roads and Revenues, but con-

tains no express provision as to whether the Tax Commissioner or the County shall pay the premium for the bond. On this issue, we quote from the opinion as found in 66 A. L. R. on pages 794 and 795.

"In *Monroe County v. Flynt*, 80 Ga. 489, 6 S. E. 173, it was said: 'There is no liability on the county for any cause whatever, except such as created by statute. Counties are not liable at common law; and it is for the reason that the several counties of the state are political divisions, exercising a part of the sovereign power of the state; and they cannot be sued except where it is so provided by statute.' "

"In this part of the statute there are no express words that make it obligatory upon the county to pay the premiums upon the bonds which the tax commissioner is to furnish, nor is there any provision in any other part of the act of 1927 which makes it the duty of the county to pay this premium;"

"And we think that, inasmuch as he is to furnish this bond, he is also under the duty of doing that which would enable him to furnish it; that is, he is to find a 'reliable bonding company,' who will sign as security, and he must pay it that which is necessary to secure its signature, to wit, the premium exacted by the Company."

"It follows that the judgment granting the mandamus absolute must be reversed."

It is, therefore, the opinion of this office that Section 9953b requires the expense of publication of lists of delinquent taxes to be taxed as costs and to be paid by the persons redeeming or purchasing the land, and that there is no authority in said Act, express or implied, for the payment of this expense by the County Collector or the County Court.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General.