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Collector - fee for collecting delinquent
Railroad taxes as construed under
Section 10044 RS 1929

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February 8th, 1933

FILED

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Hon. Roy L. Kay,
Prosecuting Attorney,
Moniteau County,
California, Missouri.

Dear Sir:

Your letter of February 4th directed to the Attorney-General, and requesting an opinion upon the subject hereafter set out has been referred to the undersigned for reply. The facts set out in your letter are as follows:

"The Missouri Pacific Railway Company has defaulted in the payment of its 1932 taxes. Our Collector has been nagging me about the amount of commissions he is entitled to charge the company on account of the delinquency. He is dissatisfied with my judgment on the matter and so I told him I would request your opinion on the matter.

The statute seems to make a different provision for the collector in the amount on delinquent for the amount to be charged and kept by the collector than that charged and kept by him in other back taxes. Section 10044 seems to me to be the determining section for the amount to be kept by the collector. Section 10035 seems to indicate that the same charges provided in other delinquent taxes must be charged and also provides for a distribution of the additional charge to be distributed to the various funds.

The collector seems to think that section 10038 authorizes him to charge and keep the same amount as on other back taxes. My opinion is that this section provides a means of procedure in the prosecution of suits to enforce collection by suit, and has no application to the remuneration for and of the collector. "

Chapter 59 of Article IX, Revised Statutes of Missouri, 1929, deals with the subject of "Delinquent and Back Taxes", and Section 9969 of said chapter and article provides for the fee to be paid the collector in reference thereto, as follows:

" To the collector, except in *such cities, four per cent on all sums collected; in such cities two per cent on all sums collected-- such per cent to be taxed as costs and collected from the party redeeming."

Chapter 59, Article XIII deals with the subject of "Taxes of Railroad and Street Car Companies". Section 10035 provides that railroad taxes become delinquent on the first day of January, and that thereafter a penalty is to be assessed on such delinquent taxes, the same as on other delinquent taxes. The penalty on other delinquent taxes is one per cent per month. After January 1st a penalty of one per cent per month attaches to delinquent railroad taxes.

Section 10037 provides for seizure of railroad property for the collection of delinquent taxes. Sections 10038 and 10039 provide for suits for the collection of such delinquent taxes. Section 10043 provides for attorneys' fees in the event special attorneys are employed for the purposes as set forth in said section, and section 10044 provides the fees to be allowed the collector in collecting such delinquent taxes, and fixes such fee at one per cent of the sum paid without seizure of personal property, and five per cent where there is a seizure.

We are interested, for the purpose of your inquiry, in Section 10044, but recite the provisions of the other sections only for the purpose of reaching a better understanding of the provisions of said section 10044.

The first mentioned section deals with the collection of delinquent real estate and personal taxes, and so far as we know, is the only section permitting a four per cent collector's commission or penalty for the collection of delinquent taxes.

Your construction of Section 10038, in our opinion, is correct, in that it has no relation to Section 9969 or to its provisions with reference to the commission allowed for delinquent tax collections. It is dealing with another subject, namely taxation of railroads and street car companies, and, as you suggest, provides a means of procedure rather than relating to the provisions of Section

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9969 for the ascertainment of a fee for the collection of delinquent personal and real estate taxes. Section 10035 has reference to the one per cent interest penalty and not the collector's commissions. The fees of the collector for collecting the railroad tax is provided for in Section 10044 and resort should be made to that section for the ascertainment of such fees.

Very truly yours,

Carl C. Abington,
Assistant Attorney-General

Approved:

Roy McKittrick,
Attorney-General

CCA/N