TAXATION--Various problems concering the application of Senate Bill 94 to the collection of delinquent State and County taxes. Should be cross indexed under Delinquent Taxes.

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State Tax Commissioner
Jefferson City, Missouri

Gentlemen: Attention Honorable Andrew J. Murphy.

Acknowledgment is herewith made of your request for an opinion of this office respecting Senate Bill 94 respecting the following questions:

"1. Are both new Sections 9952, as enacted by Senate Bill 94 and House Bill 44, effective? If not, which one is effective?

2. What is the effective date S. B. 94.
Section 8845 - 1-2-3-4
Section 9952 - 1-2-2a

3. Does first Tax Sale occur November 1933 or 1934?

4. If first sale is November 1934, what about taxes five years delinquent January 1934.

5. If suits for 1928 taxes were filed before July 24, 1933, could collector dismiss same in 1934 and proceed under new law without these taxes becoming outlawed. 9962 B.

6. If S. B. 94 is effective on July 24, will the collectors have to make new delinquent land books. Sec. 9952.

7. What fees allowed collectors and county clerks for making and recording delinquent land list. Sec. 9945 - 23 to 45. Sec. 9969 - 6 to 9.

8. At what exact date or time do taxes become levied and assessed, as to collectors duty to certify. Sec. 9963 B. 6-7.

9. Can City Collectors sell lands for delinquent taxes or do they have to certify delinquent lands up to county collector for sale. Sec. 9963 C.

10. Is it mandatory that the collector sell all real estate delinquent every year, or could he allow several year's taxes and penalties to accumulate before advertising the real estate for sale.

11. Would the enactment S. B. 94 and H. B. 44 give the collectors the option of proceeding to the collection of taxes under either bill?

12. Would Section 9961 which has not been repealed give collectors authority to enter suit for back taxes?

13. Are Senate Bills 110-115 changed or amended by subsequent passage and approval of Senate Bill 94?

14. What effect does subsequent approval of Senate Bill 80 have on interest and penalties provided for in Senat Bill 94?"

We shall take your inquiries in the order in which they appear above.

Senate Bill 94 repealed Section 9952 as appearing in the Revised Statutes of Missouri, 1929, and enacted a new Section 9952, differing in its entirety from the old section. This new section provides for an important part of the machinery for the enforcement of the payment of delinquent taxes by a sale of the property taxed. Senate Bill 94 contains no emergency clause.

House Bill 44 purported to repeal Section 9952 of the 1929 Revision and enacted a new Section 9952, which reads as follows:

> "COLLECTOR TO SUE FOR BACK TAXES--WHEN--ATTORNEY'S FEES--PUBLICATION--PROSECUTING ATTORNEYS TO ACT IN CERTAIN COUNTIES.--If, on the first day of January of any year any of said lands or town lots contained in said 'back tax book' remain unredeemed, it shall be the duty of the collector to proceed to enforce the pay-

of the taxes charged against such tract or lot, by suit in a court of competent jurisdiction of the county where the real estate is situated, which said court shall have jurisdiction without regard to the amount sued on, to enforce the lien of the state of such cities; and for the purpose of collecting such tax and prosecuting suits for taxes under this article the collector shall have power, with the approval of the county court, or in such cities, the mayor thereof, to employ such attorneys as he may deem necessary, who shall receive as fees such sum, not to exceed ten per cent of the amount of taxes actually collected and paid into the treasury, and an additional sum not to exceed $3.00 for each suit instituted for the collection of such taxes, where publication is not necessary, and not to exceed $5.00 for each suit where publication is necessary, as may be agreed upon in writing, and approved by the county court, or in such cities, the mayor thereof, before such services are rendered, which sum shall be taxed as costs in the suit and collected as other costs, and no such attorney shall receive any fee or compensation for such services except as in this section provided; and it shall be the duty of the collector, when suit shall have been commenced against any tract of land or town lot on said 'back tax book,' to note opposite said tract or lot such fact, also against whom suit has been commenced; and in cases where suit is brought for the enforcement of liens as above, where summons shall have been issued against any defendant, and the officer to whom it is directed shall make his return that the defendant cannot be found, the court before whom the suit is pending being first satisfied that the summons cannot be served, shall make an order directing that notice of such action be given to such defendant by publication; and in all cases where it shall be alleged in the petition, or in an affidavit subsequently

filed with the clerk, that the defendants, or any one of them, is a non resident of the state of Missouri, so that the ordinary process of law cannot be served upon them, then such order may be made, and such notice by publication given by the clerk of the court in vacation, and which notice shall be published in like manner and with the same effect as when ordered by the court; the proof of publication of the order required by this section may be made by the affidavit of the publisher of the newspaper in which the order was published, or by the affidavit of any person who would be a competent witness in said cause, filed with the court; and if the defendant or defendants fail to appear at the time and place required by said order and defend said cause of action, judgment by default shall be rendered as prayed, which judgment shall be as binding and effectual against the property on which the lien is sought to be enforced as if there had been personal service on the defendant; AND PROVIDED FURTHER, that in cities of thirty thousand or more inhabitants, the attorney or attorneys appointed by the collector, with the approval of the mayor of such cities, for the purpose of prosecuting suits for taxes under this article, shall be entitled to a fee in any suit, such fee not exceeding five per cent, after judgment is obtained, collected and paid into the treasury, as may be agreed upon; and if such taxes are paid before judgment is obtained, the attorney collecting the same shall be entitled to a fee not exceeding two per cent on all sums collected and paid into the treasury. PROVIDED, HOWEVER, that in all counties of this State that now have or may hereafter have a population of not less than 80,000 nor more than 95,000 according to the last decennial census of the United States, the Collector shall have no power or authority to employ such attorneys, that the Prosecuting Attorney of such counties shall be the back tax attorney, and that all fees collected as

> such by the Collector shall be paid into the County Treasury; and each of the Prosecuting Attorneys in such counties shall be entitled to such additional temporary clerk and deputy hire as in the judgment of the Prosecuting Attorney and the County Court may be deemed necessary, for such time and at such salary as may be fixed by the Prosecuting Attorney and the County Court."

House Bill 44 was both passed by the General Assembly and approved by the Governor subsequent to Senate Bill 94. We, find these two Sections 9952 as apparently valid and effective laws, the section in House Bill apparently authorizing a procedure that was repealed by and is entirely requgnant and contrary to the entire intent and purpose of Senate Bill 94. There can, of course, be no question as to the intention of the Legislature in enacting Senate Bill 94. If we can determine the legislative object of House Bill 44, we may be able to construe these acts so as to give full effect to both. The only change in Section 9952 as contained in House Bill 44 and as contained in the 1929 Revision is the addition of the proviso above underlined. This change only affected Greene County, and authorizes and requires the Prosecuting Attorney of said County to act as delinquent tax attorney. No change of any kind was made as to any other provision of said Section. Accordingly, it is a reasonable conclusion that as Senate Bill 94 repealing 9952 was not effective till ninety days after adjournment, and as said original Section 9952 was a valid and subsisting law until that time, and as House Bill 44 made no change in that section except as above pointed out, the whole intent and purpose of House Bill 44 was to effect this change in the selection of the delinquent tax attorney during the emergency clause period. An examination of the emergency clause supports this conclusion. This clause is found on page 467, Laws of 1933 and reads as follows:

> "Section 2. EMERGENCY.--The financial condition of the counties and of the people therein, to which this act applies, and relief of the same being imperative without delay, creates an emergency in the meaning of the Constitution and this act shall be in force and effect upon its passage and approval."

As the only part of said act which was not already operative was the added proviso, the "relief" creating the "emergency" referred to must have been the added proviso. That the emergency clause may be considered in determing legislative intent is well settled. The

Supreme Court in this matter stated as follows in the case of State vs. Bengsch, 170 Mo. 81, l. c. 109:

> "Now, if laws passed at remote periods, laws in pari materia, or cognate-subject laws, laws that have expired or been repealed, unconstitutional laws, may have the shell of their legislative nuts cracked by the hammer of judicial investigation, in order to extract the kernel of their intention, then a fortiori, may a similar result be reached where the shell of the legislative nut has been cracked by the legislators themselves, and the kernel of their intention extfacted and spread on the platter of an emergency clause ready for immediate use. We hold the emergency clause in this instance as conclusive evidence of the legislative purpose,* * * *."

Having concluded that the sole intent of House Bill 44 was to provide that the Prosecuting Attorney of Greene County also act as Delinquent Tax Attorney, we are of the opinion that House Bill 44 is only operative as enacted (subject to Senate Bill 80) up to July 24, 1933.

The foregoing construction is further supported by the rule that acts relating to the same jubject, passed at the same session must be treated as part of the same act and construed together. The Supreme Court en banc stated in Gasconade County vs. Garden 441 Mo. 569 as follows:

> "Especially is it true that legislative enactments passed upon the same day or at the same session, and relating to the same subject, are to be read as part of the same act.

We have not overlooked the fact that House Bill 44 was enacted subsequent to Senate Bill 94, or that it is in fact a special law, but are of the opinion that any other construction would render said House Bill 44 repugnant to the intent and purpose of Senate Bill 94.

In reply to the second interrogatory, which reads as follows:

> "2. What is the effective date S. B. 94.
> Section 9945 - 1-2-3-4
> Section 9952 - 1-2-2a"

it is evident that, as there is no emergency clause on Senate Bill 94, it is to become effective ninety days after the adjournment of the General Assembly, to-wit, July 24, 1933.

As to its effective date so far as particularly applies to Section 9945, it is our opinion that this act requires nothing to done which in the ordinary course of events would have been done by July 24, under the laws as existed prior to the passage of Senate Bill 94. It should be noted that the only changes made in Section 9945 require the Collector to perform the acts which under the section as contained in the 1929 Revision were required of the County Clerk.

As to the effective date of the Act so far as it particularly applies to Section 9952, we find it necessary to consider additional factors. The first few lines of said Section read as follows:

> "Section 9952. Shall record delinquent tax property,--Between the first of January and the first of July in the year 1934 and annually thereafter, <u>and immediately upon the effective date of this act</u>, the county collector shall make out and record * * * *, a list of land and lots, * * * * returned and remaining delinqent for taxes * * * *."

The statute is unambiguous in its statement that this list be made by the collector upon the effective date of the Act. However, it is our opinion that the failure of the passage of the emergency clause of said bill renders such action by the collector useless, unnecessary, and an unwarranted expense to the county and the tax payer, and inconsistent with the policy of the Fifty Seventh General Assembly.

Section 9952 as contained in this Act was not effective until July 24, 1933. By that date, every county clerk had completed the making of the "back tax book" under the law as existed prior to the passage of the Act. This "back tax book" contains the identical information, including taxes and penalties required by Senate Bill 94 to be noted in the "list of lands and lots returned and remaining delinquent". A charge has been assessed against each parcel of land as "costs" for the making of this book, which charge must be paid by the tax payer (subject to the terms of Senate Bill 80). The delinquent taxes can be collected as efficiently under Senate Bill 94 through the use of the "back tax book" as prepared by the clerk, as through the use of the "list of lands and lots returned and remaining delinquent" as is contemplated as being prepared by the collector. As the "book" as prepared by the clerk was prepared during the existence of a valid law, making such "book" the official record of all matters re-

quired to be kept therein, there would be no object, necessity or advantage in the compiling, at this time, of the book or list provided for in Senate Bill 94. Had the emergency clause on this Bill carried, the situation might have been different, as the collector could have then compiled the book without duplicating the work of the clerk.

As it is apparent that the interest of all parties concerned will not be served best by the collector, at this time, compiling the list of delinquent taxes provided for in Senate Bill 94, it would appear that the clause "and immediately upon the effective date of this act" is to be construed to be directory and not mandatory. The remarks of the Springfield Court of Appeals in 144 Mo. Appeal 593, Paving Co. vs. McManus, l. c. 607 are particularly appropriate.

> "The distinction between mandatory and directory enactments has often been under consideration by the courts. Into which of these classes any given statute falls is to be determined by its character and purpose. If no substantial rights depend upon it and no injury can result from ignoring it, and the purpose of the Legislature can be accomplished in a manner other than as prescribed therein and substantially the same results obtained, then the statute will generally be regarded as directory."

The foregoing was based upon the decision of the Supreme Court in the case of State ex rel Hamilton vs. Railway Co. reported at 113 Mo. 297. Judge MacFarlane at page 308 stated as follows:

> "'When statutes direct certain proceedings to be done in a certain way or at a certain time, and a strict compliance with these provisions of time and form does not appear essential to the judicial mind, the proceedings are held valid, though the command of the statute is disregarded or disobeyed.' In such case the statute is said to be directory. Sedgwick on Construction of Statutory and Constitutional Law, pp. 316, 317, 318; Dwarris on Statutes, 608-611; Beck v. Allen, 58 Miss. 156; Counties v. Railroad, 65 Ala. 394; Pond v. Negus, 3 Mass. 230; Williams vs. School District, 21 Pick. 75. The legislative power expressly existing, and the manifest purpose being merely to cor-

> rect an error, or supply an omission of the county court, we must hold that the date, or occasion named by the statute for exercising the power, was directory only and the levy, made November 5, 1887, was a valid exercise of the power."

It is, therefore, the opinion of this office that the collector is not required at this time, to prepare the list of delinquent taxes contemplated by Section 9952 as contained in Senate Bill 94, but may proceed with the collection of taxes from the back tax book prepared by the County Clerk. It is our further opinion that the list of delinquent taxes should be compiled by the collector in accordance with this section between January 1 and July 1 of 1934 and each subsequent year as required by Senate Bill 94.

In reply to your third inquiry we refer to Section 9953a as set out on page 430 of the Session Acts of 1933.

> "LANDS AND LOTS SUBJECT TO SALE--WHEN.--All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year,* * * *"

The section does not require in absolute terms a sale in November 1933, but provides for a sale each November from which it would logically follow that such sale might be held in November of 1933.

It should be remembered, however, that subsequent to the passage of this Act, Senate Bill 80 was passed and approved. Portions of this Act as found on page 423 of the Laws of 1933, are as follows:

> "Section 1. REMISSION OF PENALTIES, INTEREST AND COSTS.--In payment of the taxes assessed against any person whose name appears upon the personal delinquent lists of any year or years prior to January 1, 1933, and in payment of the taxes assessed against any real estate which appears upon the lists of delinquent and back taxes of any year or years prior to January 1, 1933, including delinquent taxes for the year 1932, the collectors of revenue of the counties and cities of this state are

> hereby empowered and directed to accept the original amount of said taxes as charged against any such person or real estate relieved of the penalties, interest and costs accrued upon the same; Provided, however,* * * * if paid after Oct. 31, 1933, and not later than Dec. 31, 1933, then such remission shall be 25 per cent of such penalties, interest and costs: * * * *."

on the first Monday of November, the date upon which the sale would be required to be held, every delinquent taxpayer would be entitled to pay the tax plus but 75% of the penalties, interest and costs, whether the same accrued by virtue of Senate Bill 94 or by other statutory authority. This right is fixed, and one of which the taxpayer may not be deprived.

In the case of State, ex rel McKittrick vs. Bair, not yet reported, Honorable Judge Charles T. Hays in construing Senate Bill 80, stated as follows:

> "So we think that under a proper construction of the statute assailed in the instant case the filing of suits for delinquent taxes and penalties is not prevented, but that penalties are remitted in the manner provided in No. 80, upon proper tender of payment of the original taxes, without penalties, fees or costs, upon judgment rendered, (except as noted later)."

Without question, Senate Bill 94 is subject to Senate Bill 80, so long as the later is effective. Quoting Judge Hays, supra;-

> "With respect to the Act here assailed, * * * * (it) declares the existence of a situation arising from lack of public funds, so grave and exigent as to imperil the functioning of the State government itself in its essential branches, and implies that the remedy lies in changing the mode of collection, and thereby accelerating the collection of delinquent taxes through the remission of the retarding penalties. This consideration impels the conclusion that in its fostering care for the transcendent public interest the Legislature intended that the Act should suspend all provisions

> of law repugnant to the same or out of harmony therewith."

It is apparent that a sale of property for the satisfaction of taxes prior to the expiration of Senate Bill 80 (January 1, 1934) would be repugnant to and out of harmony with the provisions and the intent and purpose of Senate Bill 80, under which circumstances, Senate Bill 80 must prevail. Judge Hays, in the case of State ex rel Crutcher vs. Koeln, 61, S. W. (2) l. c. 756, in considering this, states as follows:

> "Acts Nos. 110 and 115, covering only a part of the general taxes in their limited field of operation, would produce confusion and duplication of service in the collection of the taxes and would introduce a note of disharmony in the established uniform rule and system of the state, a rule and system which No. 80 would follow, and are inconsistent with the latter, which is a general act and covers the whole subject-matter of said special act.
>
> No. 80 is a valid and presently effective and operative temporary law and effectually, during the limited period of its operation, suspends the effectiveness and operation of Nos. 110 and 115, and also suspends, during the same period and by necessary implication, such statutory provisions contained in said chapter on taxation as are in conflict with No 80,* * **."

It is therefore the opinion of this office that no sale of property for the payment of taxes should be or can be legally held under Senate Bill 94 until November of 1934.

Your fourth inquiry is rather broad. It reads as follows:

> "If the first sale is in November of 1934, what about taxes five years delinquent January, 1934?"

A portion of Section 9962b, found on page 444 of Missouri Laws of 1933, reads as follows:

> "All taxes assessed or levied prior to the taking effect of this act remaining due and unpaid at the date when such taxes would have become delinquent as provided in the act under which they were assessed and levied, and which taxes are not merged in judgment prior to the effective date of this act, shall be deemed to be delinquent under the provisions of this act, and the same proceedings shall be had to enforce the payment of such unpaid taxes, with interest, penalty and costs, and payment enforced and liens foreclosed under and by virtue of the provisions of this act and the same rights of redemption shall attach."

All taxes which under the law were delinquent on July 24, 1933, are delinquent under the terms of this Act, and are subject to all its provisions. There can be no doubt as to this. While there appears to be no limitation in the Act as to what delinquent taxes it is applicable, Section 9961, R. S. of Mo. was not repealed by the Act. This section reads as follows:

> "Section 9961. LIMITATION OF ACTIONS. No action for recovery of taxes against real estate shall be commenced, had or maintained, unless action therefor shall be commenced within five years after delinquency, excepting taxes now delinquent, on which suit may be commenced at any time within five years after this chapter shall take effect, but not thereafter."

Whether or not the foregoing section would apply to and outlaw the 1928 taxes after January 1, 1934 depends on the nature of the proceeding provided for the collection of taxes under Senate Bill 94 and the proper construction to be given the word "action" as contained in Section 9961 above quoted.

Considering Senate Bill 94, we find that Section 9952a provides that lands and lots upon which taxes are delinquent "shall be subject to sale to discharge the lien" of such taxes. Section 9952b provides for the publication of list of such lands and lots annually before the first monday of November of each year. Section 9952c requires the collector to hold a sale of such lands and lots annually, beginning on the day mentioned in such notice (the first Monday of November). Section 9953 d provides for the issuance of

a certificate of purchase to the purchaser. Section 9954a provides for the time and manner of the purchaser obtaining possession of the land or lot bought. Section 9957 provides for the issuance of a deed to the purchaser in case no redemption of the land from tax sale is made. Various other sections provide for the redemption of the property. It is to be noted that in no section is any provision made for the institution of any "action" or "suit" before any court of tribunal for the enforcement of the payment of the taxes. The most that can be said is that the course prescribed by Senate Bill 94 for the collection of delinquent taxes is a "summary proceeding" by a county officer without the aid or intervention of any judicial body.

Having this in mind, we shall consider what construction is to be placed upon the term "action" as used in the above quoted statute of limitations. Under the civil law, we find that an "action" was associated with a right proceeded upon before a judicial tribunal. See Bouvier's Law Dictionary, Third Revision, 1 volume 128.

> "In the Institute of Justinian an action is defined as jus persequendi in judicio quod sibe debetur (the right of pursuing in a judicial tribunal what is due one's self); Inst. 4. 6. In the Digest, however, where the signification of the word is expressly treated of, it is said, Actio generaliter sumitur; vel pro ipso jure quod quis habet persequendi in judicio quod suum est sibive debetur; vel pro hac ipsa persequtione seu juris exercito (Action in general is taken either as that right which each one has of pursuing in a judicial tribunal his own or what is due him; or as the pursuit itself or exercise of the right); Dig. 50. 16. 16."

Bouvier defines "action" as follows:

> "The formal demand of one's right from another person, made and insisted on in a court of justice. In a quite common sense, action includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person of another in such court, including an adjudication upon the right and its enforcement or denial by the court."

Judicial definitions from each state could be supplied, by far the largest proportion of which interpreted "action" as being the enforcement of a right associated with a hearing or proceeding before a judicial tribunal.

The Courts of Colorado, in considering whether a foreclosure of a deed of trust was an "Action" within the meaning of their statute of limitations, states as follows, in the case of Rowe vs. Mulvane, 139, Pacific 1041:

> "(1) It is settled law in this state that the six-year statute of limitations does not operate as a bar to proceedings for the foreclosure of a deed of trust, when foreclosure is made by advertisement and sale by the trustee named in the deed of trust, without the aid or intervention of a court proceeding; that such proceedings are not an "action" within the provision of our statute, which reads: 'The following actions shall be commenced within six years next after the cause of action shall accrue and not afterwords'* * * *."

The foreclosure of the state's tax lien is analogous to the proceeding above referred to. The collector is required by law to conduct the sale, and convey title to the property sold. No judicial proceeding is contemplated or necessary to completely execute the purpose of the law.

In 1865 the procedure in this state for enforcing the payment of taxes was very similar to this present law. The law of 1865 provided for a sale by the collector, of land upon which there were taxes delinquent and unpaid. Section 116 provided that tracts not sold for want of bidders would be forfeited to the state. Section 117 provided for redemption of the property sold within two years of the sale, upon compliance with certain conditions. The 99th section provided for the county clerk making a "sale book" in which he was required to keep a record of the sales. Later, in 1872, a law was passed authorizing a suit to enforce payment of back taxes. Under this law, and subsequent similar laws, a suit was brought in 1877 to recover taxes delinquent since 1868. In 1868 there was a general statute of limitations barring "civil actions" after five years of the accrual of the action. The Supreme Court, in the case of The State to the use of Rosenblatt, Collector, vs. Herman, 70 Mo. 441, states as follows at 455:

> "The statute of limitations provides (2 Wag. Stat., p. 917) that 'civil actions upon a liability created by a statute,' other than a penalty or

> forefeiture, which latter are barred in three years, shall be barred in five years after the cause of action shall have accrued; and section 33 declares that 'the limitations prescribed in this chapter shall apply to actions brought in the name of this State, or for its benefit, in the same manner as to actions by private parties.' The summary proceedings authorized by the acts of 1865 and 1867, which resulted in a judgment against the land, could not be regarded as a 'civil action' within the meaning of this clause in the general statute of limitations. The act of 1872 for the first time gives an action against the owner of the land for the back taxes now sued for. There was no act of the Legislature before that authorizing any suit against the owner, and that act expressly repealed the limitation in the general statute by declaring that the action might be brought at any time, 'before the expiration of said fifth year as well as after the expiration thereof'".

There is no essential distinction, so far as our point is concerned, in the term "civil action" as used in this limitation statute of 1865, and the term "action" as used in the instant statute. The word "civil" denotes such actions as being distinguished from "criminal" actions, and do not affect the application of the term "action" in any other sense. This is made clear in the case of the State ex rel Kochtitzky, et al. vs. Riley, et al, a decision of the Supreme Court en banc reported at 203 Mo., 175. Judge Woodson, after considering various definitions of "civil suit", etc, stated at page 186 as follows:

> "It will be seen from an examination of these various definitions that the phrases, 'civil case' and 'civil suit', refer to the legal means by which the rights and remedies of private individuals are enforced or protected, in contradistinction to the words 'criminal cases,' which refer to public wrongs and their punishment; and that the word 'case,'

> when considered alone, means the facts, or the state of facts which constitute the rights of the individual, or his cause of action, which the 'proceeding,' 'action' or 'suit' protects or enforced."

And considering "suit", "action" and "case", stated on page 187 as follows:

> "It might not be out of place here to state that the authorities before cited attach to the word 'suit' a broader and more comprehensive meaning than is given to the word 'action' or 'case,' and it is some significance that the broader term is used in the change of venue statute rather than the one employed in the Constitution regarding the jurisdiction of the circuit court."

It therefore unquestionably appears that the summary proceeding provided for by Senate Bill 94 is not an "action" and accordingly is not within the bar of Section 9961.

Insofar as the general limitation statutes are concerned, we find them to be as follows:

> "Sec. 860. Period of limitation prescribed—Civil actions, * * * * can only be commenced * * * *."

> "Sec. 861. What actions shall be commenced within ten years.—* * * * First, an action upon* * * *; second, actions brought* * * *, and actions on* * * *; third, actions for* * * *."

> "Sec. 862. What within five years.* * * * First, all actions upon * * * *; second an action upon a liability created by a statute,* * * *; third, an action for trespass* * * *; fourth, an action for taking* * * *; fifth, an action for * * * *."

> "Sec. 863. What within three years.—* * * * First, an action against* * * *; second, an action upon* * * *."

> "Sec. 864. What within two years. * * * * An action for libel* * * *. All actions against* * * *."
>
> "Sec. 865. No action to foreclose mortgage after note barred.--No suit, action or proceeding under power of sale to foreclose any mortgage* * * *."

It is apparent that sections 860, 861, 862, 863, and 864 are inapplicable to Senate Bill 94 for the same reason that Section 9961 does not barr the proceeding. It is interesting to note that in Section 865, pertaining to the foreclosure of deeds of trust, the insufficiency of the use of the word "action" to barr the foreclosure of a deed of trust by the trustee, is recognized, and in this section, "action" is supplemented by the term "suit" and "proceeding". As said section applies only to the foreclosure of deeds of trust, it is unapplicable to a proceeding to enforce payment of taxes, and consequently does not barr the proceeding under Senate Bill 94.

It is accordingly the opinion of this office that Sections 9961, 860, 861, 862, 863, 864 and 865 R. S. of Mo. 1929 do not barr a sale of property in November, 1934 under Senate Bill 94, for 1928 delinquent taxes.

Your fifth inquiry reads as follows:

> "If suits for 1928 taxes were filed before July 24, 1933, could collector dismiss same in 1934 and proceed under new law without these taxes becoming outlawed. 9962 B."

In the event suit was brought before the effective date of Senate Bill 94, to-wit, July 24, 1933, the collector may, at his option, either proceed to collect the taxes under the law as existing prior to July 24, 1933, or he may dismiss his action theretofore instituted and proceed under the provisions of Senate Bill 94. This is by direction of the specific provisions of the Act.

The pertinent parts of Sections 9962b as found on page 444 of the Missouri Laws of 1933 read as follows:

> "Provided however, that nothing herein contained shall be construed to affect the right of the county collector to proceed to final judgment and foreclosure for taxes upon which suit had

> been instituted prior to the effective date of this act, but not in final judgment, nor to prejudice the rights of collection of any costs or commissions attaching in such cases which were valid under the tax law existing at the time of institution of such suits. As to taxes merged in judgment at the effective date of this act the foreclosure of the tax lien and proceedings relative thereto shall be had under the provisions of the law as such law existed prior to the passage of this act, and as to the suits for delinquent taxes instituted, but not merged in judgment, at the effective date of this act the collector shall have the right to proceed to final judgment and foreclosure of the tax lien under the provisions of the law as it existed prior to the passage of this act, or such collector may, in his discretion, dismiss such suits and proceed to foreclosure of the tax lien under the provisions of this act, subject to the preservation of rights to all valid costs and commissions that may have already attached in such character of suits under the law as it existed prior to the passage of this act."

Accordingly, as the Act particularly permits the discontinuance of the suit and authorizes the collector to proceed to sell the property under the Act, and as Section 9961 does not apply to the foreclosure proceedings as prescribed by Senate Bill 94, it is the opinion of this office that 1928 taxes would not become outlawed upon the dismissal of the suit referred to, so as to preclude a sale of the property for such taxes under said Act in November 1934.

Your sixth inquiry reads as follows:

> "If S. B. 94 is effective on July 24, will the collectors have to make new delinquent land books. Sec. 9952."

We stated, in answering the second portion of your second inquiry, that this section was effective on July 24, 1933, except as it apparently required the collector to duplicate the work of the county clerk respecting the delinquent land book. As heretofore stated, it is the opinion of this office that the collector is not required to make up this book until between the first day of January and July of 1934.

Your seventh inquiry reads as follows:

> "What fees allowed collectors and county clerks for making and recording delinquent land list. Sec. 9945 - 23 to 45. Sec. 9969 - 6 to 9."

The appropriate parts of these Sections read as follows:

> "Sec. 9945. When taxes are hereafter delinquent. * * * *that for making and recording the delinquent land list, the collector who makes such book* * * *shall receive only ten cents per tract, city or town lot, and the clerk for comparing and authenticating such record of the delinquent list of land and lots as made by the collector shall receive five cents per tract, city or town lot."

> "Sec. 9969. Fees and Compensation.* * * * To the county collector, for recording the list of delinquent land and lots twenty-five cents per tract, to be taxed as costs and collected from the party redeeming such tract."

By comparing these two sections with the two sections amended, we find them to be the same except that the collector now receives these fees, whereas the clerk received them in the past. Portions of these sections, as contained in the 1929 Revision read as follows:

> "Sec. 9945. When taxes are hereafter delinquent.—* * * *that for making the same into the 'back tax book', the clerk or other officer who makes such book shall receive only ten cents per tract, city or town lot.* * * *."

> "Sec. 9969. Fees and Compensation.—* * * * To the county clerk, for making the 'back tax book', twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract.* * * *."

Under these sections, the clerk received twenty-five cents per tract

on taxes delinquent for the first time for making up the back tax book, and ten cents per tract for transferring the taxes remaining unpaid at the end of the year, to the "consolidated back tax book". It appears that the only logical interpretation that can be placed upon these amended statutes is that the collector is entitled to twenty-five cents for placing each tract upon which taxes are delinquent for the first time, in the original list of lands and lots remaining delinquent and unpaid, and to ten cents per tract for the transferring such of the tracts as remain delinquent and unpaid to the "back tax book". By reason of the last clause of Section 9945 as amended, the clerk is entitled to five cents per tract, for comparing and authenticating the delinquent list of land and lots as made by the collector. Such is the opinion of this office.

Your eighth inquiry reads as follows:

> "At what exact date or time do taxes become levied and assessed as to the collector's duty to certify. Sec. 9963 B. 6-7."

The following portions of the section are pertinent to this inquiry:

> "Sec. 9963b. MANNER OF COLLECTING INSURANCE ON PROPERTY--WHO SHALL RECEIVE SAME--FORM. In the event of the destruction by fire, windstorm or tornado of any permanent building * * * * situate upon any land* * * *which* * * *at the time of destruction were situate upon any land* * * *against which taxes were then levied and assessed, and was so situate at the time of such levy and assessment, the lien of such taxes shall attach to and follow any insurance that may be upon said property at the time of its destruction* * * *provided however, if in the opinion of the county collector the destruction of such building* * * *will not prejudice the collection of such taxes* * * *the county collector shall be authorized in writing,* * * *to waive and* * * *release the lien by this section given. * * * * Theassured* * * * shall file with such company a statement from the collector* * * *inwriting,* * * * that there are no taxes against said building* * * * or that taxes exist against the same and the

> amount and description thereof, and whether or not such lien is waive, * * * *."

Taxes levied and assessed have at all times been a lien upon the real estate taxed. To further secure these taxes, the insurance upon the improvements on the land was made amenable to this lien. A study of the foregoing section leads us to believe that no new lien was created, but the lien heretofore existing on real estate is simply extended to the insurance. The phrase "the lien of such taxes shall attach to and follow" does not contemplate a new and separate lien on the insurance, as distinct from the lien on the real estate, but refers to one lien upon the real estate and insurance.

While we have not overlooked the clause that states that the insurer shall pay the taxes, etc., then due, levied and assessed, it is our opinion that the lien extended to such insurance is the lien as exists upon the land, i.e;- for taxes levied and assessed, whether due or not. It is possible that under these circumstances, the collector could not state the amount of such taxes. In this event, he could only state such taxes had been levied and assessed, but the exact amount thereof was undertermined.

It is the opinion of this office that whatever lien exists upon the land for the payment of taxes, is by the terms of Senate Bill 94 extended to the insurance in the event of a "destruction" occuring under the circumstances provided for in section 9963b, and the statement required of the collector should cover all such taxes.

Your ninth inquiry reads as follows:

> "Can City Collectors sell lands for delinquent taxes or do they have to certify delinquent lands up to county collector for sale. Sec. 9963 C."

Section 9963c, as found on page 448, Missouri Laws of 1933, is as follows:

> "Sec. 9963c. ACT SHALL APPLY TO COUNTIES AND CITIES AND CERTAIN OFFICERS.--In all counties that have adopted or may hereafter adopt township organization, wherever the word 'collector' is used in this act, as to such counties such designation shall be construed to mean 'treasurer and ex-offico collector,' or in Section 9962 may be township collector. Where applicable the word 'county' as used in this act shall be construed 'City' and the words 'county clerk' shall be construed 'city clerk' or other

proper officer.'"

It would at first appear that the intent was to establish one general system to be used in the collection of all delinquent taxes, whether state, county, city, township, municipal or otherwise. The passage of Senate Bill 96, amending Section 9970, might further indicate this to be the intention. Section 9970, as amended, is found on page 451, Missouri Laws of 1933, and is as follows:

> "Sec. 9970. COLLECTOR SHALL RECEIPT FOR DELINQUENT TAXES.--The collectors of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state shall, on or before the first Monday in March, annually, return to the county collector a list of lands and lots on which the taxes or special assessment levied by such city or incorporated town remain due and unpaid. The county collector shall receipt for the aggregate amount of such delinquent taxes, which receipt shall be held by the treasurer of the city or town, and shall stand as evidence of indebetedness upon the part of the county collector and his bondsmen to such city or town, until settlement in full has been made by payment of said treasurer or his successor of all taxes thus receipted for, or by a return of such part as is uncollectible."

The only change made was to change the date of "the first day of May" to "the first Monday of March". The sections are identical except for this change. This was made to conform to the provisions of Senate Bill 94 respecting the making of the list of delinquent lands by the collector; Section 9952 providing the collector shall make such list,

> "including therein the delinquent taxes of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state returned delinquent to the county collector, separately stated, * * * *."

It must be kept in mind, that Senate Bill 94 amended only Chapter 59, and did not purport to amend or repeal any other Chapter.

A number of sections of said Chapter were repealed, and some fifty-seven new sections enacted. No mention, directly or indirectly, is made in the Act of the statutes which pertain particularly to the collection of delinquent city taxes, which are to be found in Chapter 38, entitled "Municipal Corporations". Section 6206, et seq. of Chapter 38 provides for a summary proceeding to collect delinquent taxes due Cities of the First Class, which proceeding prescribes a sale of the property for delinquent taxes, and in general, provides for a system of tax collection similar to that provided for the collection of state and county taxes by Senate Bill 94. Section 6605 et seq. of Chapter 38 provides for the method of collecting delinquent taxes due Cities of the Second Class. The sections provide for suit being brought by the City Attorney in the name of the City to enforce the general and special taxes with penalties and costs. These sections contain a complete procedure, separate and distinct from that referred to, both before and after the passage of Senate Bill 94, in Chapter 59. Section 6780 et seq. of Chapter 38 provide for the method of collecting delinquent taxes due Cities of the Third Class. Portions of Sections 6780 and 6781 are as follows:

> "Sec. 6780. DELINQUENT TAXES—LIEN FOR TAXES.—* * * *The enforcement of all taxes authorized by this article shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes, including the seizure and sale of goods and chattels, both before and after said taxes shall become delinquent: Provided, that all suits for the collection of city taxes shall be brought in the name of the state, at the relation and to the use of the city collector."

> "Sec. 6781. COLLECTOR'S DUTIES OF—DELINQUENT TAXES, ETC.—* * * *The city council shall cause the land and lot delinquent list and the personal delinquent list to be returned to the <u>city collector</u>, who shall be charged therewith, <u>and who shall proceed</u> to collect the same in the same manner and under the same regulations as are or may be provided by law for the collection of delinquent lists of real and personal taxes for state and county purposes: Provided, that all suits for the collection of city taxes shall be

> brought in the name of the state, at the relation and to the use of the city collector."

Section 6995 et seq. of Chapter 38 provide for the method of collecting delinquent taxes due cities of the fourth class. The appropriate portions of Sections 6995 and 6996 are identical with the portions of sections 6780 and 6781 above quoted, insofar as the issue involved here is concerned. Sections 7108 et seq. of Chapter 38 provide for the method of collecting delinquent taxes due Towns and Villages. Portions of Section 7109 are as follows:

> "Sec. 7109. ASSESSMENT AND COLLECTION OF REVENUES.- * * * *it shall be the duty of the board of trustees to require the collector, annually, to make out and return, * * * *a list of delinquent taxes remaining due and uncollected on the first day of January of each year, to be known as the delinquent list. It shall be the duty of the board of trustees, * * * *carefully to examine the same,* * * *and shall * * * cause said delinquent list * * * *with bills therefor, to be placed in the hands of the county collector, who shall give a receipt therefor and proceed to collect the taxes due thereon, in like manner and with the same effect as delinquent taxes for state and county purposes are collected.* * * *."

The issue at hand is, which of the foregoing classes are affected by Senate Bill 94 and to what extent.

It is clear that Article 2, of Chapter 38, pertaining to Cities of the First Class, and Article 3 of Chapter 38, pertaining to Cities of the Second Class, each prescribe a complete system or procedure for the collectionof delinquent taxes. These systems are provided especially to apply to the particular class of city affected. The systems so provided are not repealed and apparently were not within the purview of the legislative intent at the time Senate Bill 94 was placed on the Statute Books. To apply Senate Bill 94 to delinquent taxes due Cities of the First and Second Class would be to invite confusion and uncertainty, as there would then be two methods by which such taxes might be enforced.

It is our opinion that by the common rules of construction Senate Bill 94 cannot be applied to delinquent taxes due to Cities of the First and Second Classes.

We shall consider taxes due Cities of the Third and Fourth Classes together, as the statutes respecting them are of the same legal effect. We call attention to the wording of Sections 6781 (pertaining to Third Class Cities) and 6996 (pertaining to Fourth Class Cities) 1929 Revision, each of which provides that

> "the land and lot delinquent list (is) to be returned to the City Collector * * * *who shall proceed to collect the same, in the same manner and under the same regulations as are or may be provided by law for the collection of delinquent lists of real and personal taxes for state and county purposes. * * * *."

Under the foregoing provisions City Collectors in the past enforced the payment of delinquent taxes by suit following the procedure prescribed by Chapter 59 for collection of State and County taxes. However, such suit was brought by the City Collector, and not by the County Collector, and by virtue of Sections 6781 and 6996, as the case required, and not by virtue of any Section of Chapter 59, including 9970 heretofore quoted. The Supreme Court has held that these two sections (6781 and 6996) were the ones applicable to city delinquent taxes, rather than section 9970, or any other section of Article 9 or 10 of Chapter 59.

Section 1604 of the Revised Statutes of 1889 pertained to the collection of taxes in Cities of the Fourth Class. This was the predecessor of Section 6996 of the 1929 Revision. Section 7672 of the 1889 Revision pretained to City and Town delinquent taxes, and was the predecessor of Section 9970, Revised Statutes of 1929. The City of Aurora was a City of the Fourth Class at the time in question. In the case of City of Aurora ex rel Williams, Collector, vs. Lindsay, 146 Mo. 509, the question was raised as to whether the suit should be brought by the County Collector under Section 7672 or by the City Collector under Section 1604, 1889 Revision. The Court stated as follows: l. c. 516.

> "The tax suit was brought under the provisions of section 1604, Revised Statutes of Missouri 1889, and it is claimed by the parties to the motion that it should have been brought under section 7672 et seq., Revised Statutes 1889, that section 1604 is a mere continuation in 1889 of the laws of 1881 (Acts 1881, p. 59) and that the act of 1881 was repealed, by implication by the Act of 1883 (Acts 1883, p. 150), and that the Act of 1883 is now section 7672 et seq. of the Revised Statutes of

1889.

On the other hand it is claimed that section 1604 is an act duly enacted by the 35th General Assembly, and being later in date than the Act of 1883, and special in its nature, it repeals, by implication, the conflicting provisions of the Act of 1883, and its requirements must be observed in collecting taxes due cities of the fourth class.

An examination of the history of section 1604, as it appears in the Revised Statutes of 1889, discloses that the 35th General Assembly regularly adopted it as a part of the act revising the cities, towns and villages law of this State, with the exception that in the last sentence of the section the revisers have substituted the word 'article' for the word 'chapter' as it is in the original bill.

It is therefore the law now, and its provisions must be followed, rather than those of the Act of 1883 (being now section 7672 et seq.) in actions for the collection of taxes due cities of the fourth class."

This position was affirmed in the case of State ex rel Duble, Collector of the City of Princeton vs. Lewis, 256 Mo. 121, wherein suit was brought to collect delinquent City taxes, and in which Judge Faris stated at page 122:

"* * * * We agree with learned counsel * * * *that the statute now in force requires these suits to be brought in the name of the State of Missouri at the relation and to the use of the <u>City Collector</u>, naming him, and the city for which he sues (Sec. 9348, R. S. 1909): * * * *."

Section 9348, R. S. of 1909 is identical with Section 6995, R. S. 1929.

In the case of The State ex rel Bauer, Collector of the City of Jefferson vs. Edwards, 162 Mo. 660, the Supreme Court applied the same construction to Cities of the Third Class. On page 667 Judge Gantt quotes what is now a portion of Section 6781, 1929 Re-

vision, and states that by reason of said section

> "The City Collector* * *is fully empowered 'in the same manner' to certify the back tax bills for delinquent city taxes and his certificate is prima facie evidence that the taxes just and correct. * * * *."

The foregoing case also shows the application to city delinquent taxes that is to be made of the law relating to delinquent State and County taxes.

As the enforcement by suit is no longer possible under Senate Bill 94, the method of collecting delinquent taxes due Cities of the Third and Fourth Classes must follow the procedure established for the collection of State and County taxes; to-wit, the procedure provided for in Senate Bill 94. This by reason of the portions of sections 6780 and 6995 which provide for the enforcement of taxes

> "in the same manner and under the same rules and regulations* * * *as may be provided by law for the collection and enforcement of the payment of state and county taxes,* * * *."

It is therefore the opinion of the office that Senate Bill 94 is applicable to Cities of the Third and Fourth Classes insofar as it prescribes the method and manner of the collection and enforcement of the payment of the taxes, but any proceedings had relating thereto are to be conducted by the city collector consistent with the requirements of Articles 4 and 5 of Chapter 38, 1929 Revision.

We shall lastly consider the collection of delinquent taxes due Towns and Villages. By reason of Section 7109, heretofore quoted, the proper officers of the town or village are required to place the delinquent list in the hands of the collector, who shall

> "proceed to collect the taxes due thereon, in like manner and with same effect, as delinquent taxes for state and county purposes are collected."

As to such taxes, the collector is to proceed to collect as though they were county and state taxes. He is to do all things necessary to effect the collection of the taxes. Under such circumstances he should proceed to sell the property as required by Senate Bill 94 for such taxes.

It is, therefore, the opinion of this office that delin-

quent taxes due Towns and Villages are to be collected by the County Collector under the provision of Senate Bill 94.

Your tenth interrogatory reads as follows:

> "Is it mandatory that the collector sell all real estate delinquent every year, or could he allow several years' taxes and penalties to accumulate before advertising the real estate for sale."

We shall first consider the statutory provisions concerning this problem. Section 9952, which we have already quoted, provides for the making of a list of lands upon which taxes remain delinquent and unpaid. This list is to include all property upon which State and County taxes are delinquent. Section 9952a provides in part as follows:

> "Sec. 9952a. LANDS AND LOTS SUBJECT TO SALE—WHEN.—All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, * * * *."

Section 9952b provides in part as follows:

> "Sec. 9952b. SHALL PUBLISH LIST OF DELINQUENT LANDS—EXPENSE.—The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper* * * *. To such list shall be attached and in like manner so printed and published a notice that so much of said lands and lots as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of sale will be sold at public auction at the court house door of such county, on the first Monday in November next thereafter; * * *."

Section 9952c provides in part as follows:

> "Sec. 9952c. PERIOD OF SALE—MANNER OF BIDS.—On the day mentioned in the notice, the county collector shall commence the sale of such lands, and shall continue* * * *until so much of each parcel assessed

> * * * *shall be sold as will pay the taxes, interest and charges thereon * * * *."

From the foregoing excerpts, it is plain that the list prepared by the collector, including each and every tract upon which taxes remain delinquent and unpaid, is required to be published in the notice of the sale, said notice to state that so much of "<u>said lands and lots</u>" shall be sold as necessary, and that on the day of sale, the collector "shall commence the sale of <u>such lands</u>". At no point in the procedure is the collector given any discretion as to what lands shall be sold. The only exemption from sale is in the event lands are offered for sale but no bid is received sufficient to pay the tax, penalties and charges. (Sections 9953 and 9953a). But they must be <u>subjected</u> to sale.

This conclusion is irresistible when we consider the object of Senate Bill 94. Primarily, it is expected to effect the regular payment of taxes, thus assuring the annual income necessary to support the government. Secondarily, it is to ease the penalty burden upon the delinquent taxpayer. To permit taxes to accumulate year after year without a sale of the property would defeat both pumposes. The state and the counties would be no better off than under the former system of permitting taxes to accumulate five years, then instituting a suit that was permitted to pend in court for an additional period. As to the taxpayer, penalties accrue on the tax at 10% per annum, till sold (section 9952), after sale, the taxpayer is only required to pay the interest provided for in the certificate of purchase. See Section 9953d, page 453 Laws of 1933, part of which is as follows:

> "Such certificate of purchase shall also recite* * * *the rate of interest that such certificate of purchase shall bear, which rate of interest <u>shall not exceed</u> the sum of ten percent per annum."

It is to be expected that the rate of interest these certificates will actually bear will be far less than the maximum rate, thus saving the delinquent taxpayer a substantial portion of the penalty which would accrue if the sale of the property were delayed a number of years and penalties accrued at the rate of 10% per annum.

It is, therefore, the opinion of this office that it is the mandatory duty of each collector <u>to subject to sale each year, all property</u> upon which taxes remain delinquent and unpaid.

We have not overlooked the fact that Section 9952a provides all such land "shall be subject to sale" each year, instead of "shall be sold" each year, but believe that in view of Section 9953 of the Act forbidding a sale when a sufficient bid is not received, the wording as found in Section 9952a is as mandatory as possible.

Your eleventh interrogatory is as follows:

> "Would the enactment S. B. 94 and H. B. 44 give the collectors the option of proceeding to the collection of taxes under either bill?"

In treating your first inquiry, we have stated our views as to what effect is to be given House Bill 44. Our opinion is that no option is given, or was intended to be given, to the collector to proceed under House Bill 44 after the effective date of Senate Bill 94. This conclusion is further supported by the fact that Section 9953, providing the manner in which suit shall be instituted, against who it shall be instituted, the form of the petition, the form of certification and proof and the manner of service; Section 9954, providing for the employment of an abstractor and his duties; Section 9955, providing for the compensation of the abstractor; Section 9956, providing for the form of the judgment, if against the defendant, the issuance of a special scire facias and the lien of the judgment; Section 9957 providing that suits are to be tried at the return term; and Section 9958, providing, in the case of a sale of the property, that the sheriff shall execute a deed thereto and the prima facie character of such deed; have all been repealed by Senate Bill 94, and nothing enacted in their place consistant with a collection of the taxes by suit. The one section contained in House Bill 44 is but the crank to the car, and entirely useless by itself, except as hereinbefore stated.

Your twelfth inquiry is as follows:

> "Would Section 9961 which has not been repealed give collectors authority to enter suit for back taxes?"

Section 9961, which has heretofore been considered carefully in respect to your fifth inquiry, could not be considered in any respect as authorizing the collector to enter suit for back taxes. It is entirely a statute of limitation, withdrawing a remedy, not granting one. This section provides no procedure for the col-

lection of taxes. It provides for a defense for the taxpayer, not a cause of action for the collector.

It is our opinion that Section 9961 can in no way be construed to authorize the entry of a suit for back taxes.

Your thirteenth inquiry is as follows:

> "Are Senate Bills 110-115 changed or amended by subsequent passage and approval of Senate Bill 94?"

We quote Section 9975c from Senate Bill 110 and Section 9975b from Senate Bill 115, as found on pages 451 and 452, Missouri Laws of 1933, before proceeding with this question.

> "Sec. 9975c. MAY PAY TAXES IN INSTALLMENTS.—In all cities in this State which now have, or which may hereafter have 700,000 inhabitants or more, all general taxes for school and city purposes that are delinquent for the year 1931 and prior years, may be paid in whole or in installments of at least twenty-five per cent. of such tax prior to January 1, 1935, at the face amount of the tax plus 6% interest per year, from the date of delinquency. Out of such interest shall be deducted all legal fees and costs and the balance of such interest shall be paid to the School Board or City. If the fees and costs shall exceed the interest, then the amount to be paid as interest shall be the amount of such fees and costs, without additional interest for penalty. The collector shall issue temporary receipts for partial payments made."

> "Sec. 9975b. MAY PAY DELINQUENT TAXES IN INSTALLMENTS.—In Cities that now have or which may hereafter have 700,000 inhabitants or more, all delinquent general taxes for School and City purposes for the year 1932 and thereafter may be paid in whole or in installments of at least twenty-five per cent. of such tax with interest on the amount paid, at the rate of 2/3 of 1% per

> month from the date of delinquency, without any additional fees for collection or attorney's charges. The Collector shall issue temporary receipts for partial payments made."

The foregoing statutes are not as explicit as they could have been, in stating that "taxes" were meant to be included in "taxes for school and city purposes". However, after careful consideration, we have arrived at the conclusion that Senate Bills 110 and 115 apply only to general city taxes for school and city purposes. The following sentence from Section 9975c was one of the factors considered:

> "Out of such interest shall be deducted all legal fees and costs, and the balance of such interest shall be paid to the <u>school board or city</u>."

The "school board" referred to is unquestionably the School Board of the City of Saint Louis. Such a term does not properly designate the state school fund, but is indicative of the recipient of city taxes collected for school purposes. Senate Bills 110 and 115 are companion Acts. The first refers to taxes for 1931 and prior years, the second refers to taxes for 1932 and subsequent years. The same purpose resulted in the passage of both bills. In each bill the classes of taxes referred to are described in identical language. Any phrase in one act identifying the taxes referred to in that act controls the construction to be placed upon the same term in the other.

To construe "taxes for school* * * "purposes" to include state and county taxes levied for school purposes would be to raise a serious constitutional question. Section 3 of Article 10 of the Missouri Constitution provides:

> "All taxes shall be levied and <u>collected</u> by <u>general</u> laws."

Subdivision 32 of Section 53 of Article 4 of the Missouri Constitution provides:

> "In all other cases where a general law can be made applicable, no local or special law shall be enacted;"

State and county taxes must be collected by <u>general</u> laws. To apply these two Bills to the state and county taxes delinquent

in the City of Saint Louis would be to collect these taxes by a special, not a general law. An inequality between taxpayers in Saint Louis City and in the counties of the state would be evident. There can be no question but that the general law (Senate Bill 94) is applicable to the delinquent state and county taxes levied in Saint Louis City. Any such construction applying Senate Bills 110 and 115 to State and County taxes for school purposes would conflict with both the quoted sections of the Constitution of this State.

Having concluded that Senate Bills 110 and 115 apply only to city taxes for school and city purposes, and having determined, in considering your ninth inquiry, that Senate Bill 94 is inapplicable to city taxes, except as there stated, it is the opinion of this office that said Bills are not changed or amended by the subsequent passage of Senate Bill 94.

Your fourteenth inquiry is as follows:

> "What effect does subsequent approval of Senate Bill 80 have on interest and penalties provided for in Senate Bill 94?"

In considering your third inquiry, we stated the effect that is to be given Senate Bill 80 and the extent to which it modifies Senate Bill 94. We quote a paragraph of Judge Hays in the case of State ex rel vs. Koehn, supra l. c. 756:

> "No. 80 is a valid and presently effective and operative temporary law and effectually, during the limited period of its operation, suspends the effectiveness and operation of Nos. 110 and 115, and also suspends, during the same period and by necessary impliaction, such statutory provisions contained in said chapter on taxation as are in conflict with No. 80, and particularly the provisions relating to the compensation of the respondent for any and all his services rendered and to be rendered during said period incident to back or delinquent taxes or the collection thereof."

Senate Bill 80 is the latter of the two. The penalties and interest prescribed by Senate Bill 94 are not different in principal from those assessed under the statutes repealed by said Bill. There is no evidence of any legislative interest to exclude such penalties from the operation of Senate Bill

80. It is the opinion of this office that the interest and penalties provided for in this Act are subject to and are to be collected only in accordance with the terms of Senate Bill 80, so long as the same is operative.

Having answered your inquiries to the best of our ability, we respectfully direct your attention to Section 9960d of the Act, which in part provides:

> "Sec. 9960. TAX COMMISSION TO PRESCRIBE FORMS.—The state tax commission" * * * shall, with the advice of the attorney general, decide all questions that may arise in reference to the true construction or interpretation of this act, or any part thereof, with reference to the powers and duties of county or township tax officers, and such decision shall have force and effect until modified or annulled by the judgment or decree of a court of competent jurisdiction."

The Commission is authorized to decide questions of construction and interpretation of the Act with reference to the powers and duties of the tax officers. Any decision made by the Commission in accordance with the foregoing opinion shall be considered as having been made "with the advise of the Attorney General". We trust that the foregoing may be of assistance to you.

Respectfully submitted.

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.