

TAXATION: CITY TAXES, Cities of the third class collected under Senate Bill 94.

November 29, 1933



Hon. George A. Spencer
City Attorney
Guitar Building
Columbia, Missouri

Dear Mr. Spencer:

We acknowledge receipt of a request for an opinion of this office reading as follows:

"Due to the fact that the City Collector must begin some action to collect back taxes on city property to enforce the lien on taxes that are over four years due, and since the new tax law is somewhat confused, I am writing to get the matter straightened out so that the Collector will know how to proceed to collect such back taxes. You will note that Section 9952 of the Revised Statutes of 1929 is repealed and a new section is enacted, number 9952 on page 429 of the Laws of Missouri, 1933. This law deals with the sale of delinquent property, which provides that the Collector shall proceed to sell it. On page 465 of the Laws of Missouri, 1933, the section 9952 of the Revised Statutes of Missouri, 1929, relating to delinquent and back taxes is repealed and a new section numbered 9952 is enacted in lieu thereof, which is the same wording of the old section 9952 except one provision is added.

The section on page 429 was passed on March 25th and approved April 7th, while the section on page 465 was passed April 1 and approved April 28. The section on page 429 does not provide for a tax attorney while the one on page 465 provides for a tax attorney and the land to be sold as was provided under the former statute.

I would like to know under what statute the collector should proceed to enforce the lien due against the property."

I.

HOUSE BILL 44, PAGE 465, LAWS OF MISSOURI, 1933, HAS NO AFFECT AFTER JULY 24, 1933, AND IS SUPERSEDED BY SENATE BILL 94.

It is true that the acts of the 57th General Assembly respecting the collection of back taxes at first present a confusing front. Under the terms of Senate Bill 94, Section 9952, as appearing in the R. S. Mo. 1929, was repealed and a new section enacted by the same number differing in its entirety from the old section.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 sale of the property taxed. It should be noted that Senate Bill 94 contains no emergency clause. By House Bill 44, we find that Section 9952 of the 1929 revision is also purportedly repealed and a new section is added. This new section 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 payment 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 or 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, required by said order, 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 therehad 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 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 repugnant 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 to 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 determining legislative intent is well settled. The Supreme Court in this matter stated as follows in the case of State vs. Bengsch, 170 Mo. 81, 1. 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 extracted 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 subject, 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.

Having determined that the delinquent taxes cannot be collected for the city of Columbia under the provisions of House Bill 44 found on page 465 Laws of Missouri 1933, we pass to the question as to the manner in which these delinquent taxes should be collected by your city collector.

II.

SENATE BILL 94 DETERMINES METHOD AND MANNER OF COLLECTION AND ENFORCE- MENT OF CITY TAXES.

We have heretofore held in an opinion to the Tax Commission of this State, that under the statutes in force after the effective date of Senate Bill 94, the city collectors in cities of the third and fourth classes should follow the procedure established by the general law for the collection of state and county taxes, and that therefore your city collector should proceed to the collection of the city taxes at the same time and in the same manner as the county collector proceeds to collect the state and county taxes. We are herewith enclosing to you a copy of the pertinent parts of our opinion to the Tax Commission covering this particular point. You will find a paragraph marked on the last page in which the foregoing is stated.

III.

1928 DELINQUENT TAXES NOT BARRED FROM SALE IN 1934.

The general statute of limitations applicable to actions for the recovery of taxes is Section 9961, R.S. Mo. 1929. This section was neither repealed nor amended by Senate Bill 94 but remains the same as it was prior to the enactment of Senate Bill 94. We have heretofore held in the same opinion to the Tax Commission that the statute of limitations is not sufficient to bar a sale of property for taxes under Senate Bill 94. We are enclosing to you an excerpt from this opinion covering this point so as to make unnecessary a repetition of that point in this opinion.

Hon. George A. Spencer

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IV.

CONCLUSION

It is therefore the opinion of this office that your city collector is required to proceed to collect delinquent city taxes in the manner and at the time as required by Senate Bill 94 for the collection of State and County taxes, and that at the sale of property for such taxes, which cannot be held before November, 1934, he may sell property for 1928 taxes.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General

APPROVED:

Attorney General

HGW:MM
2 encls.