

TAXATION: City Collector entitled to two per cent commission on delinquent tax collections.

April 9, 1934.

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Hon. H. H. Harris, Jr.
City Attorney
Bank of Saline Bldg.
Marshall, Missouri

My Dear Mr. Harris:

Acknowledgment is made of your request for an opinion of this office on the following matters:

"I am writing in regard to Taxation and Revenue Relating to collection of delinquent and back taxes, and providing for foreclosure, sale and redemption of delinquent property--as was passed by the Fifty-seventh General Assembly.

First, please advise me as to whether or not this is mandatory with Cities of the third class.

Second, Section 9969 (Fees of Collector) sets the rate at 2% for collection of delinquent taxes. Our City Collector gets 4%. Will the ordinance have to be changed in regard to per cent collected?

Third, Section 9952 (Shall record delinquent tax property) (page 429 of 1933 laws) seems to be in conflict with the same section passed by the same assembly and printed on page 465 of the 1933 Laws. Please advise me as to which one to follow or can they be reconciled.

Furthermore, does the last Session Act passed just recently in regard to the remission of penalties and interest effect the sections passed on page 425 and there after of the Laws of 1933." * * * "

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We shall deal with your inquiries in the order above set out.

I.

IT IS MANDATORY UPON THE COLLECTOR
TO SUBJECT ALL DELINQUENT PROPERTY
TO SALE EACH YEAR.

We have heretofore held in an opinion to the Tax Commission of this State, that under the procedure as established by Senate Bill 94 it is mandatory upon the Collector to subject to sale all property upon which there remain delinquent and unpaid taxes. This conclusion is inescapable when considering the obvious purpose of this new delinquent tax law. So that you may be advised as to the basis of this decision I herewith forward you a copy of the pertinent part of that opinion.

II.

CITY COLLECTOR ENTITLED TO TWO PER
CENT COMMISSION ON DELINQUENT TAXES.

Section 9969 Laws of Missouri 1933, p. 429, reduced the commission allowed Collectors for the collection of delinquent taxes from four per cent to two per cent. This section reads as follows:

"Fees shall be allowed for services rendered under the provisions of this article, as follows: To the collector, except in such cities, two per cent on all sums collected; in such cities, two percent on all sums collected--such per cent to be taxed as cost and collected from the party redeeming. To the county collector, for recording the list of delinquent land and lost, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

It is entirely probable that the city ordinance referred to in your inquiry was enacted in conformity with the state law upon the subject, i. e. at the time the ordinance was passed the state law provided for a four per cent commission. However, the state law being changed, it would be in order to amend the city ordinance

to conform to the state law. It is the recognized rule in this state that city ordinances must be consistent with the federal and state constitutions and the statutes on the subject. In the case of Wood vs. Kansas City, 162 Mo. 303, the Court considered an ordinance providing that no notary public fees should be received by any clerk in the city treasurer's office except such as were turned into the credit of the general fund of the city. The Supreme Court states the general rule, l. c. 309:

* * * * But the power to enact ordinances by defendant city can only be exercised within the limits of its charter, and in harmony with the Constitution and statutes of the State. (Town of Paris v. Graham, 33 Mo. 94.) 'In this country, the courts have always declared that ordinances passed in virtue of the implied power, must be reasonably consonant with the general powers and purposes of the corporation, and not inconsistent with the laws and policy of the State.'

* * * * *

In this case the Court held the ordinance void and stated, l. c. 310:

* * * * The ordinance provides that no fees shall be received by said notary except such as are turned into the city treasury to the credit of the general revenue fund of the city, while by express provision of the statute he is entitled to charge and receive for his services the fees therein prescribed. It, therefore, seems impossible to conceive of an ordinance which would in its effect be more directly in conflict with the statutes referred to than this one.* * * * *

In the later case of St. Louis vs. Dreisoerner, 243 Mo. 217, the rule is again applied, l. c. 222:

"Tower Grove Park is a benefaction of Henry Shaw. It was created and is governed by statute. (Laws 1867, pp.172-175.) It is not under the control and supervision of the park commissioner of St. Louis. (Charter of St. Louis, art. 8, Sec. 1). To protect it from contiguous nuisances

enumerated therein, an act of the Legislature has been enacted forbidding their erection within the limits of one quarter of a mile in any direction from the exterior lines of the park. (Laws, 1871, p. 189, sec. 1.) This city ordinance includes five of the callings mentioned in the legislative act and sixteen other callings not referred to in the act, and prohibits the existence of any of the occupations described in the ordinance within a radius of six hundred feet of Tower Grove Park. As far as the ordinance is inconsistent with the act it is invalid, since all ordinances of the city of St. Louis must conform to relevant state laws.* * * *

We apply this rule in this case upon the presumption that your city is not operating under any special charter granting the city the exclusive control of fees and commissions, to be paid the collector and assessed against delinquent taxpayer. If your city is operating under such a special charter the foregoing rule would not necessarily apply, as special charters are construed to be special laws and therefore exceptions to the general laws on the same subject.

It is the opinion of this office that your charter provision allowing a different rate other than that established by the state law would be in conflict therewith and should be revised so as to conform with the state law, absent special charter provisions hereinbefore referred to.

III.

SECTION 9952 p. 429, LAWS OF MISSOURI
1933, SUPERSEDES SECTION 9952, page
465 LAWS OF MISSOURI, 1933.

We have heretofore held in an opinion to the State Tax Commission of this State that the purpose of House Bill 44 found at page 465 Laws of Missouri, 1933, was to provide that the Prosecuting Attorney of Greene County act as delinquent tax attorney and that after July 24, 1933, Section 9952 as contained in Senate Bill 94 superseded Section 9952 as contained in House Bill 44 for all other purposes. We are herewith enclosing to you a copy of the pertinent parts of our opinion to the Tax Commission covering this

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particular point and trust that these satisfactorily answer your inquiry.

IV.

HOUSE BILL 124 EXTRA SESSION
57th GENERAL ASSEMBLY.

From your last inquiry we are unable to determine the remission statute to which you refer. There were two remission statutes passed at the extra session, one of them Senate Bill #40, which expired January 1, 1934, the other, House Bill #124, which is a permanent measure. We have recently issued an opinion to the Comptroller's Office of the City of St. Louis dated April 4, 1934, expressing our views upon this enactment. We trust this covers the problem with which you are confronted.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

HGW:MM
Encls.