

TAXATION and REVENUE:

Page 465 Laws of Missouri, 1933, not effective after 7-24-33 except as to delinquent tax attorney.

June 23, 1934.

6-28



Hon. Robert W. Hawkins
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri

Dear Mr. Hawkins:

Acknowledgment is herewith made of your letter of June 9, 1934, requesting an opinion on the following matters:

"Mr. Chas. G. Ross, Collector of the Revenue within and for Pemiscot County, desires an opinion from your office concerning the legislative enactments of 1933 for the collection of state and county taxes.

On page 429 of the Session Acts of 1929, it is provided among other things, that Sections 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9960, 9962 and 9963, Article 9, Chapter 59, Revised Statutes of Missouri, 1929, entitled "Taxation and Revenue" and relating to delinquent and back taxes, be and the same are hereby repealed and fifty-one new sections enacted in lieu thereof pertaining to the same subject.

The legislative enactments beginning on page 425 and extending to page 449 of the Session Acts of 1933, being Senate Bill #94, completely changes the method of collecting taxes in this state, but to the mind of our Collector the question is very much complicated by House bill #44, beginning on page 465 of the Session Acts of 1933 by which enactment Section 9952, Article 9, Chapter 59 of the Revised Statutes of 1929 seems to be again repealed and a new section enacted in lieu thereof, making it the duty of the Collector to proceed to enforce the payment of taxes charged against the land by suit in a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 and cities.

.....

Such being the case, the Collector is at a loss to understand the method he should pursue in collecting taxes that are delinquent now and become delinquent in the future.* * * * *

By the provisions of Senate Bill 94 a new and comprehensive system of enforcing the payment of delinquent taxes was enacted and the old method of enforcing the payment of delinquent taxes by suit was abandoned. Section 9952 R. S. Mo. 1929 was repealed by this law and a new section enacted providing for certain things that are indispensable to the system inaugurated by Senate Bill 94. However, Senate Bill 94 did not contain an emergency clause.

House Bill 44 found at page 465 Laws of Missouri, 1933, also purported to repeal Section 9952 of the 1929 revision, and thus enacted a new Section 9952 in lieu thereof. The Section as reenacted in House Bill 44 is identical with the Section found in the 1929 Revision except that this proviso was added:

"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 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 of the proviso above set out. 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 Section 9952 was not effective till ninety days after adjournment and as said original Section 9952 was valid and a 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 mode of the selection of the delinquent tax attorney, such change applying only to Greene County, Missouri. 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 period, 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 was only operative as enacted up to July 24, 1933, and now has no application, so far as affecting the mode of procedure set up by Senate Bill 94.

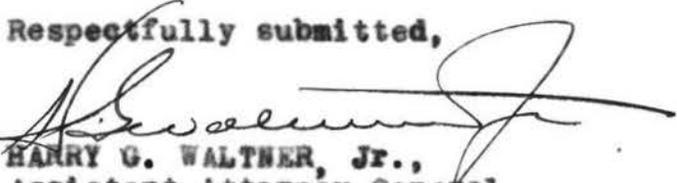
June 22, 1934.

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. Gardin* 441 Mo1 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.

Respectfully submitted,



HARRY G. WALTNER, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

HGW:MM