TAXATION: Senate Bill 94 modified by House Bill 44 Extra Session authorizing 'tial proceedings to be instituted within five years.

9-4

September 4, 1934.

Hon. Charles M. Hay,
City Counsellor
City of St.Louis,
St.Louis, Missouri

Dear Mr. Hay:

We acknowledge your communication of recent date to General McKittrick requesting an opinion of this office respecting Senate Bill 94 of the Regular Session of the 57th General Assembly. We have also received communications from various officials respecting this law and what effect, if any, House Bill 44 of the Regular Session and Senate Bill 54 of the Extra Session of the 57th General Assembly have upon the operation of this new tax law. We are answering all of these inquiries in this opinion.

I.

DUTY OF THE STATE TAX COMMISSION
AND THE ATTORNEY GENERAL OF MISSOURI
TO CONSTRUE SENATE BILL 94.

Under general statutory provisions it is the province of the Attorney General to advise and render official opinions to the heads of the State Departments and certain other officials. However, in addition to these general provisions the Legislature directed the State Tax Commission, with the advice of the Attorney General to decide all questions arising under the provisions of Senate Bill 94:

> "* * *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 or a court of competent jurisdiction"

It is by virtue of the general statutory duties aforesaid and the foregoing provisions of Section 9960d, page 443 Laws of Missouri, 1933, that the following opinion is adopted as a tnme interpretation of the portions of Senate Bill 94 hereinafter considered.

II.

SENATE BILL 94 OF THE REGULAR SESSION AND SENATE BILL 54OF THE EXTRA SESSION OF THE 57th GENERAL ASSEMBLY OF MISSOURI MUST BE CONSTRUED TOGETHER.

Senate Bill 94, as passed by the 57th General Assembly of Missouri in Regular Session, was a complete scheme of procedure for the enforcement of the collection of delinquent taxes in this State. By its provisions it repealed all of the sections of the Revised Statutes of Missouri of 1929 which had to do with and authorized a suit before a judicial tribunal for the enforcement of the collection of delinquent real estate taxes and enacted in lieu thereof some fifty-one sections setting up the new procedure minutely and in detail.

The Attorney General in an opinion to the State Tax Commission, date August 8th, 1933, shortly after the effective date of Senate Bill 94 and prior to the passage of Senate Bill 54 of the Extra Session, held thatthe provisions of Senate Bill 94 were mandatory, requiring a sale each year of all lands and lots upon which there were any delinquent and unpaid taxes. Clearly, Senate Bill 94 as enacted required the offering for sale each year of all tracts and lots for delinquent and unpaid taxes. In this opinion it was held that the mandatory provisions of Senate Bill 94 were not in any way affected or modified by Section 9961, Revised Statutes of Missouri 1929, which Section was neither repealed nor amended by Senate Bill 94. This Section provided as follows:

> "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."

However, the General Assembly in Extra Session repealed Section 9961 of the 1929 revision and enacted a new Section in lieu thereof, page 154, Laws of Missouri, Extra Session 1933-34. This Section reads as follows:

> "No proceedings for the sale of land and lots for delinquent taxes under the provisions of Chapter 59, Revised Statutes of Missouri, 1929, relating to the collection of delinquent and back taxes and providing for foreclosure sale and redemption of land and lots therefor, shall be valid unless initial proceedings therefor shall be commenced within five (5) years after delinquency of such taxes, and any sale held pursuant to initial proceedings commenced within such period of five (5) years shall be deemed to have been in compliance with the provisions of said act in so far as the time at which such sales are to be had is specified therein, provided that proceedings for the sale of lands and lots on which taxes are delinquent for the year 1928 may be commenced at any time prior to December 31, 1934. Provided further, that in suits or actions to collect delinquent drainage and/or levee assessments on real estate such suits or actions shall be commenced within five years after delinquency, otherwise no suit or action therefor shall be commenced, had or maintained."

That the foregoing enactment was intended to apply to the procedure provided in Senate Bill 94 cannot be questioned. The history of the enactment itself clearly shows the intent. Considering the wording of the act, more definite terms could not have been used. It does not refer to an action or suit as did the original Section 9961 and which terms would have clearly indicated an application to suits or actions at law for the collection of the taxes. Instead this act applies to "proceedings for the sale of lands and lots for delinquent taxes." This quoted phrase is used innumerable times in Senate Bill 94 and refers distinctly to the sale as authorized by that law/ We direct attention to the message of the Governor delivered December 4th, 1933 to the House and Senate in joint session (p. 165, S. J. Extra Session of the 57th General Assembly). In this message His Excellency stated:

> "The subjects and purposes to be considered by the 57th General Assembly are hereby enlarged and supplemented to include the consideration of enactment of such legislation as may to the

> General Assembly seem proper concerning the following subjects and purposes." " " "
>
> (c) AN ACT to repeal Section 9961 of Article 9, Chapter 59 of the Revised Statutes of Missouri, 1929, relating to limitation of actions in connection with delinquent and back taxes, and to enact a new section in lieu thereof, to be known as Section 9961, relating to limitation of sales for delinquent taxes and validity thereof."

In authorizing the General Assembly to consider the subject matter of House Bill 54, the Governor plainly indicated that any enactment passed under this authorization was to apply to the proceedings contemplated by Senate Bill 94. His message authorized the repeal of the law relating to limitation of actions and the enactment of a law relating to limitation of sales. That the message of the Governor delivered to the General Assembly in Extra Session may be considered in the construction of a law then enacted is settled law in this and other states.

> 23 Corpus Juris p. 102
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> 25 R. C. L. p. 903.
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> State vs. Adams, 19 S. W. (2d) l. c. 673.

No confusion should arise because of the use of the term "under the provisions of Chapter 59, R. S. of Mo. 1929" in Senate Bill 54. When Senate Bill 94 was passed it repealed certain Sections of Chapter 59, R. S. Mo. 1929 and "enacted in lieu thereof" certain new sections. Senate Bill 94 then became a part and parcel of Chapter 59 of the 1929 revision and was properly referred to in Senate Bill 54. The rule that amendments to the Revised Statutes take the place of and are to be construed after their enactment as being inserted in lieu of the repealed sections is laid down in State v. Schenk, 238 Mo. l. c. 444:

> "Defendant claims that the amendment of 1907 was not repealed by the Act of 1909, and that said amendatory Act of 1907, extending the right of preliminary examination to all felony cases, is still in force. We cannot agree to this contention. The Act of 1905, by its terms, created a new section to be incorporated in the Revised Statutes of 1899, said section to be known as section 2478a, and to be regarded

> thereafter as if actually written into said Revised Statutes. The Act of 1907 by its terms amended this section, 2476a, which <u>thereafter was to be regarded as if written into the revision as thus amended.</u>"

It is therefore conclusive that Senate Bill 54 of the Extra Session was intdnded to operate directly upon Senate Bill 94 of the Regular Session. Unquestionably these laws are pari materia, each referring to the collection of delinquent taxes and the one operating directly upon the procedure prescribed by the other. They must therefore be construed together and harmonized so that a workable law will result and all parts thereof be given a meaning. As stated in State vs. Fulks, 247 S. W. l. c. 132:

> "The canons of construction require that the two statutes relating to the same subject should be harmonized and read together and construed as one law." * * *"

House Bill 54 provides that initial proceedings for the sale of lands and lots may be commenced at any time within five years of delinquency. This provision is certain and must be given effect or the entire statute will be meaningless. This provision is to operate directly for the benefit and advantage of the taxpayer. It is remedial in nature and intended to modify the harsh requirements of Senate Bill 94, to-wit, the requirement that <u>all</u> lands and lots upon which taxes are delinquent be offered for sale each year. If the new Section 9961 does not have this effect it is entirely meaningless, for if all lands and lots are to be sold each year, initial proceedings will then be instituted the first year of delinquency (after the sale this November) and no taxpayer will be granted the grace given by Senate Bill 54. Every law passed by the General Assembly must be given effect if possible to do so.

> Home Insurance Co. vs. Wickham, 219 S. W. 961.

As the mandatory character of Senate Bill 94 cannot be retained if the act of the Extra Session is to be given any effect, we conclude that those provisions of Senate Bill 94 affected by Senate Bill 54 have become directory insofar as is necessary to give affect to the latter, and full benefit of this remedial law is to be given the taxpayer.

It is therefore the opinion of this office that the provisions of Senate Bill 94, passed by the 57th General Assembly in Regular Session have been modified by the passage of Senate Bill 54 of the

57th General Assembly in Extra Session, so as to permit initial proceedings to be instituted at any time within five years of the date of delinquency.

III.

HOUSE BILL 44 DOES NOT MODIFY OR AFFECT SENATE BILL 94 AND THE PROVISO THEREOF IS UNCONSTITUTIONAL.

House Bill 44 was a reenactment of Section 9952, Revised Statutes of Missouri 1929, with a proviso affecting Greene County, Missouri. This House Bill did not refer to or consider any of the other fourteen sections which were repealed by Senate Bill 94 and which had heretofore been considered an integral part of the system of collecting delinquent real estate taxes by suit.

In the opinion of August 8th, 1933 to the State Tax Commission, hereinbefore referred to, the effect of House Bill 44 upon Senate Bill 94 and whether or not the former Act had any place in the scheme for the collection of delinquent taxes in this state after the effective date of Senate Bill 94 was considered. It was determined at that time that in view of the complete and detailed system for the collection of delinquent taxes provided for in Senate Bill 94 and the fact that the evident purpose of House Bill 44 was to provide that the Prosecuting Attorney of Greene County should act as delinquent tax attorney; that House Bill 44 was operative as enacted up to July 24th, 1933; that there was no intention that this House Bill should modify or affect the plan laid out in Senate Bill 94 and that House Bill 44 was void after July 24th, 1933, insofar as it conflicted with or was repugnant to Senate Bill 94. At that time no consideration was given to the constitutionality of any part of House Bill 44. As the efficacy of House Bill 44 has been so strongly urged, we have reexamined this law and its possible effect upon Senate Bill 94 and have determined that our former ruling is correct and should be adhered to and that the proviso of House Bill 44 is unconstitutional. Before taking up the constitutional questions we direct your attention to the following points in support of our former ruling.

Senate Bill 94 presents a detailed plan for the collection of delinquent real estate taxes. House Bill 44, at its best, is general, leaving all matters of detail to conjecture. Under these circumstances, Senate Bill 94 must be held to supersede House Bill 44. 59 Corpus Juris, p. 1055:

> "Where statutes passed at the same session are necessarily inconsistent, a statute which deals with a common subject matter in a new and particular way will prevail over one of a more general nature * * *."

A more apt situation for the application of the foregoing rule could not possibly be presented. On the one hand we have fifty-one sections of law enacted with a certain and definite intention clearly discernible from the law itself. The procedure has been laid out from the day the tax becomes delinquent to the day the landowner redeems his property or the purchaser obtains his deed which under certain circumstances may be nine years later. On the other hand, we have a single section, general in terms, obscure in meaning and from the terms of which we can deduce no intention to modify or affect Senate Bill 94.

House Bill 44 reenacted Section 9952, R. S. Mo. 1929, verbatim with the following proviso, (Laws of Mo. 1933, p. 466.)

> "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."

In our former opinion, we held that the nature of the proviso distinctly indicated the intention of the Legislature in passing the entire act to-wit, that it was only intended to provide that the Prosecuting Attorney of Greene County be the delinquent tax attorney and that there was no intention to modify, affect or change Senate Bill 94. As additional proof of this legislative intent we direct your attention to the legislative proceedings concerning their enactment. House Bill 44 was introduced by Representatives McGee of Greene

County and Warren of Stone County. On January 17th, 1933, the time of its introduction, Section 9952 of the 1929 revision was in effect and there was no bill pending before either branch of the General Assembly which would modify or change this Section. Therefore, the bill rightly and properly was entitled "An Act to repeal Section 9952 R. S. of Mo. 1929, and to reenact a new Section in lieu thereof relating to the same subject." (H. J. p. 62) This bill was referred to the Committee on Ways and Means on January 20th (H. J. p. 83). On the other hand Senate Bill 94 was not introduced in the Senate until January 25th, 1933 (S. J. p. 103) and was referred to the Committee on Ways and Means on January 26th, 1933, (S.J. p. 111). If dates can mean anything in interpreting legislative intent, these dates indicate conclusively that House Bill 44 was not intended to modify or affect Senate Bill 94 as Senate Bill 94 was not before any legislative body at the time of the introduction of House Bill 44. It has been suggested that the following rule is applicable to the instant discussion. 59 Corpus Juris, p. 1055:

> "It is also a general rule that* * * *statute passed later but going into effect earlier will prevail over one passed earlier but going into effect later; * * * **".

In our opinion this rule is not applicable to the instant situation (A) because the rule heretofore referred to in this opinion is clearly appropriate, is more generally recognized and in our opinion takes precedence over the above quoted rule, (B) because House Bill 44 did not in fact become effective before Senate Bill 94 as the Emergency Clause was void and ineffectual. We shall only consider the latter proposition as this opinion is now of some length. The Emergency Clause of House Bill 44 reads as follows:

> "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."

This Emergency Clause is ineffectual, first, because it can only operate to bring the proviso of Section 9952 into immediate effect and that proviso being unconstitutional and void the Emergency Clause has nothing upon which to operate; second, the emergency clause is insufficient itself in that the act does not correct any condition which endangers the immediate preservation of the peace, health or public welfare and does not state facts sufficient to constitute a legislative finding of such condition.

FIRST

THE PROVISO OF HOUSE BILL 44
IS UNCONSTITUTIONAL.

House Bill 44 is a local or special law and as such conflicts with subdivisions 15, 32 and 33 of the Constitution of the State of Missouri. For some forty years the delinquent tax attorneys in each county of the State have been appointed by the County Collector and approved by the County Court. This has been the general and uniform practice over a long term of years. House Bill 44 in effect exempted Greene County from this general and universal law. By the provisions of this bill, the Prosecuting Attorney of Greene County is required to be delinquent tax attorney while in the other hundred and thirteen counties the uniform method of appointing a delinquent tax attorney is retained. This exact situation has heretofore been presented to the courts of our State, and condemned as unconstitutional. In 1877 the Legislature passed an Act, Section 13 of which provided "the judge of probate shall receive such fees for his services as now are or will hereafter be allowed by law for probate business." In 1897 that Section, which had become Section 3407 of the 1889 revision, was repealed and reenacted to read as follows:

> " 'Section 3407. 'The judge of probate shall receive such fees for his services as are now or may hereafter be allowed by law for probate business.)' Provided, that in all cities which now have or may hereafter have a population of three hundred thousand inhabitants or more, the judge of probate shall receive such compensation as now is or may hereafter be provided by law to be paid to judges of the circuit courts in such cities out of the city treasury. Provided further, that this act shall not apply to any judge now in office.'* * * *"

By the foregoing amendment a proviso was added to the existing law by which the judge of the probate court of the City of St.Louis was to be paid a salary out of the City Treasury rather than to receive the fees allowed by the general law for the acts performed. The constitutionality of that proviso was before the Supreme Court in the case of Henderson v. Koening, 168 Mo. 356. The Court held the proviso unconstitutional and stated, l. c. 371:

> "Section 3407, as it originally stood in the revision of 1889, provided that: 'The judge of probate shall receive such fees for his services as now are ormay hereafter be allowed by law for probate business.' This law as it thus and then stood applied to every judge of probate in the State of Missouri. And if the Legislature, then, without repealing in terms the statute just quoted, had enacted into a law the proviso section 1764 now contains, no one, it seems, could doubt that such additional enactment would have amounted to the partial repeal of a general law, and the consequent enactment of a special or local law. Because, in such cases, the partial repugnancy would accomplish the partial repeal (Potter's Dwarr., 113, 155, and cas. cit.; Sutherland Stat. Constr. Secs. 137, 138, and cas. cit.)
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> But the case is in no wise altered by reason of the fact that such repeal was in reality accomplished by the pretended and formal amendment by enacting as a part and parcel of section 1764 the proviso aforesaid, which declares the old law intact save in the City of St.Louis, and save in regard to the then incumbent of the office of judge of probate in that city. If such legislation as this can be sustained, then there is neither force nor efficacy in the constitutional prohibition which forbids that the Legislature (indirectly enact such special or local law by the partial repeal of a general law.** * * * **

The situation in that case and in the instant case is identical and must be considered as binding upon us. Other decisions could be cited to show the conflict of this proviso with other sections of the constitution but we deem these unnecessary. As the proviso of House Bill 44 is unconstitutional there is nothing left upon which the emergency clause added to that bill can operate. This is certain, as Section 9952 of the 1929 revision was operative without further legislation during the emergency period and the only change made upon this section by House Bill 44 was to add the proviso heretofore referred to as being unconstitutional. No emergency clause was necessary to put the contents of House Bill 44, exclusive of the proviso, in ~~immediate~~ effect, because the same law was in effect by virtue of Section 9952 R. S. Mo. 1929

SECOND

HOUSE BILL 44 WAS NOT IN FACT EFFECTIVE PRIOR TO SENATE BILL 94. THE EMERGENCY CLAUSE IS VOID AND INEFFECTUAL.

Because of the Emergency Clause it is said that House Bill 44 became effective before Senate Bill 94. Any law to be immediately effective must be of such a character as exempts it from the referendum provisions of the Constitution. The emergency clause attached to such an act must clearly state the facts constituting the emergency and the finding of the legislature that the instantenous operation of the bill is necessary for the immediate preservation of the "public peace, health and safety."

As the only portion of this act which was not in effect at the time of its passage was the proviso, we must conclude that the proviso offers the relief which was considered imperative. Let us examine the law in this light. So far as the taxpayer is concerned, the proviso states "that the prosecuting attorney of such county shall be the back tax attorney and all fees collected as such by the collector shall be paid into the county treasury." So that, so far as the taxpayer is concerned he will continue to pay all the penalties and costs which he was required to pay prior to the enactment of this proviso hence no relief is afforded him.

Insofar as the counties are concerned the proviso provides "each of the prosecuting attorneys * * *shall be entitled to such additional temporary clerk and deputy hire as* * *may be deemed necessary." So that, insofar as the county is concerned it will be required to hire such additional assistants as would be necessary to effect the collection of the delinquent taxes. To presume that this would effect a financial saving to the county would be to hold that the Legislature for forty years has fostered and maintained an inefficient and extravagent system for the collection of back taxes. We cannot accuse the General Assembly of any such action. From the foregoing examination it is apparent that no financial relief will result to either the counties or the taxpayers from the adoption of this proviso; that on the one hand the taxpayer will be required to pay the same penalties and costs as before, and on the other the county must hire additional attorneys to collect the taxes. The bill shows on its face that the relief afforded is but mythical and a jest. It totally and wholly fails to show any emergency whatsoever involving the public peace, health or safety. The measure itself must bear out the declaration that its immediate operation is necessary for the immediate preservation of the public peace, health and safety. State v. Sullivan, 224 S. W. 327, l. c. 338:

> "* * *By the referendum provision of our Constitution, as we have construed it, supra, no measure subject to the referendum can be withdrawn therefrom by a mere emergency clause. Nor should the people be denied their constitutional right of referendum by a mere declaration of 'immediate preservation of the peace, health or safety' unless such declaration is borne out by the face of the measure itself. The courts have the right to measure the law by the yardstick of the Constitution, and determine whether or not the lawmakers breached the Constitution in making the declaration.***"

In this case the Court considered the following emergency clause which was attached to the act adopting the Workmen's Compensation system in this State. This emergency clause reads as follows:

> " 'Sec. 81. Emergency.--It being necessary for the commission herein created to be fully organized and make preliminary preparations, and there being an immediate necessity therefor, creates an emergency within the meaning of the Constitution, and except as in this act otherwise provided, this act shall take effect from and after the date of its approval."

The Court in passing upon this stated, l. c. 334:

> "* * *The emergency clause to the measure under consideration does not attempt to declare such measure to be of the excepted class in the constitutional provision named. It only declares in a way, the legislative reason for the conceived emergency. It does not declare that the measure is 'necessary for the immediate preservation of the public peace, health, or safety.' If it had so declared the declaration would have been false on the face of the measure itself. But for our present purpose it suffices to say that the emergency clause does not bring the measure within the excepted class named in the Constitution.* * *"

These emergency clauses are identical in that each states, "creates an emergency within the meaning of the constitution," and likewise in our opinion, had the clause stated that it was necessary for the immediate preservation of the public peace, health or safety it would have been false upon its face.

We conclude that the emergency clause of House Bill 44 is void and therefore that Bill became effective on the same date as Senate Bill 94. As these acts are irreconcilably inconsistent, Senate Bill 94 being the latest expression of the Legislature of a complete plan for the enforcement of the payment of delinquent taxes must prevail over House Bill 44.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
Attorney General.

The foregoing opinion adopted as a true construction of Senate Bill 94, page 425 et seq. Laws of Missouri, 1933.

STATE TAX COMMISSION

CHAIRMAN.

MGW:MM