

TOWNS AND VILLAGES:

Method of collecting delinquent taxes--  
qualifications of town trustees--method  
of removal of unqualified members of a  
school board.

March 28, 1934.

4/11



Mr. C. C. Kennett  
Town Clerk  
Granger, Missouri

Dear Sir:

We acknowledge your request for an opinion dated  
March 16, 1934. Your request is as follows:

"I am writing to you for information in  
regard to the collection of town taxes.  
Will you please outline the necessary pro-  
cedure in order to force the payment of town  
taxes? We are organized with a board of  
five trustees.

"In view of the fact that it would be much  
better to collect the taxes without taking  
the natural course of the law, I should  
like to know if it is proper for a person  
who is delinquent in taxes to serve on a  
school board or a town board? If not what  
course should be taken to remove or prevent  
such persons from serving?

"The above information is very necessary in  
order for our town to pay it's bills, such  
as street lights and other necessary ex-  
penses. We shall be very grateful to you  
if you can give us a prompt reply. I thank  
you\*."

The last National Census for the town of Granger,  
Missouri, shows it to be incorporated with 142 inhabitants.

By the contents of your letter, we are assuming that  
the town of Granger is not incorporated under any special charter  
from the Legislature, but rather under the general provisions of  
law relating to towns and villages in Missouri.

Section 7092, R. S. Mo. 1929 provides as follows:

"The corporate powers and duties of every village so incorporated shall be vested in a board of trustees, to consist of five members, unless such town shall contain more than twenty-five hundred inhabitants, in which case such board shall consist of nine members; the first board of trustees shall be appointed by the county court at the time of declaring such town incorporated, who shall continue in office until their successors are elected and qualified; and such successors shall be chosen by the qualified electors residing in such town on the first Tuesday of April in every year in the manner hereinafter provided."

Section 7097, R. S. Mo. 1929, provides in part as follows:

"Such board of trustees shall have power to pass by-laws and ordinances \* \* \* to levy and collect taxes; \* \* \*."

The town of Granger having provided by ordinance a tax levy and provided for the collection of same, this city tax is collectable as state and county taxes are collected by the city of Granger, and is a civil obligation, and payment can be forced under the provisions of Section 7109 R. S. Mo. 1929 which provides:

"All assessments on real and personal property within the limits of such town, which may be certified and transmitted to the board of trustees, from time to time, as provided in the preceding section, shall be taken and considered as the lawful and proper assessment on which to levy and collect the municipal taxes of the town, and the payment of all taxes authorized by this article shall be enforced by the collector in the same manner and under the same rules and regulations as may be provided by law for collecting and enforcing the payment of state and county taxes, and for that purpose it shall be the duty of the board of trustees to require the collector, annually, to make out and return under oath, 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, at the next meeting after such delinquent list shall be returned, or as soon thereafter as convenient, carefully to examine the same, and if it shall appear that all property and taxes contained in said list are properly returned as delinquent, they shall approve such list and cause an order of approval to be entered on the journal, and the amount of taxes in such list to be credited on the account of the collector; and shall also cause said delinquent list or a certified copy thereof, with the 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 said collector shall pay over the taxes collected to the city treasurer, at the times and in the manner provided by law for the payment of county taxes to the county treasurer, and shall make the same statements and settlements for such taxes with the board of trustees, and at the same time as may be provided by law for statements and settlements with the county court for county taxes, and all taxes shall bear the same rate of interest, and the same penalties shall attach to the non-payment thereof when due, as may be provided by law in cases of county taxes. A certified copy of any tax bill included in the delinquent list, approved by the board of trustees, shall in all cases be prima facie evidence that the amount therein specified is legally due by the party against whom such tax bill is made out, and that all provisions of the law and ordinances have been duly complied with, and that the same is a lien on the property therein described."

This tax may be a lien on property, for Section 7107, R. S. Mo. 1929 provides as follows:

"All general and special taxes levied by the board of trustees of any town upon property therein, in conformity to the laws of the state and the ordinances of such town, shall constitute a lien upon the property upon which they are levied, until paid."

Laws of 1933, page 450, Section 9970, provides as follows:

"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 assessments 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 indebtedness upon the part of the county collector and his bondsmen to such city or town, until settlement in full has been made by payment to said treasurer or his successor of all taxes thus receipted for, or by a return of such part as is uncollectible."

CONCLUSION.

It is the opinion of this office that the town of Granger must follow the civil remedy provided in the statutes to recover delinquent taxes due the city from assessments on real and personal property. As provided in Section 7109, R. S. Mo. 1929, the board of trustees must require the collector to make out and return under oath a list of delinquent taxes, due and uncollected on January 1st, of each year. Then no sooner than the next meeting of the board after the delinquent tax list is returned to them they must examine the list and if true approve the list and let the journal show their approval, and also let the record show the amount of the tax credited on the account of the city collector. Next the trustees should certify to the delinquent tax list and attach thereto the original tax

bills and deliver to the county collector. It is their duty to take, and the county collector's duty to give a receipt therefor. The duty to collect then falls upon the county collector in the same manner as state and county taxes are collected and it is his duty to make settlements with the trustees at the same time and in like manner as statements and settlements are made with the county court for county taxes.

## II.

Section 7, Article XIV. of the Constitution of Missouri, deals with the removal from office of county, city, and all public officers and reads as follows:

"The General Assembly shall, in addition to other penalties, provide for the removal from office of county, city, town and township officers, on conviction of willful, corrupt or fraudulent violation or neglect of official duty. Laws may be enacted to provide for the removal from office, for cause, of all public officers, not otherwise provided for in this Constitution."

Section 11202, R. S. Mo. 1929, providing when an officer shall forfeit office and be removed, reads as follows:

"Any person elected or appointed to any county, city, town or township office in this state, except by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall, knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner hereinafter provided."

Section 9328 R. S. Mo. 1929, provides:

"The qualified voters of the district shall, annually, on the first Tuesday of April, elect two directors, who are citizens of the United States resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding their election or appointment, and who shall have resided in this state for one year next preceding their election or appointment, and shall be at least thirty years of age, who shall hold their office for three years and until their successors are duly elected and qualified; and all vacancies in the board shall be filled for the unexpired term."

CONCLUSION.

It is our further opinion that there is nothing in the qualifications of directors of the School Board requiring the payment of a city tax. (Should any person be elected to the School Board who does not qualify under the provisions of Section 9328, R. S. Mo. 1929, any qualified elector within the district could bring a quo warranto proceeding in the circuit court, and upon sufficient proof said officer would be ousted from the School Board.) Although the General Assembly has the constitutional power to pass laws disqualifying office holders, there is nothing in the qualifications of a trustee of your town disqualifying one for being delinquent in any tax payments and subjecting him to an ouster as trustee, nor have you submitted facts which would disqualify him under the general law.

Respectfully submitted

WM. ORR SAWYERS,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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