

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

May 10, 1934.



Hon. Mollie Milroy
City Treasurer & Collector
Mayor's Office
Louisiana, Missouri

My Dear Madam:

Acknowledgment is herewith made of your request for an opinion of this office dated April 11, 1934. Your communication reads as follows:

"I will appreciate if you will advise me as to whether the City of Louisiana, Missouri, should penalize delinquent taxes, as prescribed in the bill passed by the last legislature, or at the same penalty as has always been charged.* * * *"

We presume that you refer to Senate Bill 94 passed by the 57th General Assembly in regular session. This act materially changed the procedure for the collection of delinquent taxes and reduced the commission allowed Collectors in certain cases from four per cent to two per cent of the amount collected. This Section, the same being 9969 Laws of Missouri 1933, p. 429, 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 per cent 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 lots, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

It is entirely probably 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 be in its effect 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. 323:

"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 therefor 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.

As to the practical operation of this law as applied to the collection of city taxes, we herewith enclose to you a portion of the opinion of this office rendered to the State Tax Commission which deals particularly with the collection of delinquent taxes in cities.

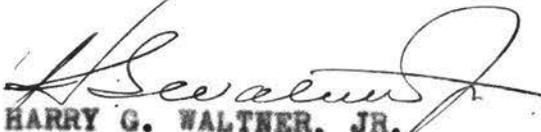
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We trust that this may be of assistance to you.

Respectfully submitted,


HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

HGW:MM
Enc.