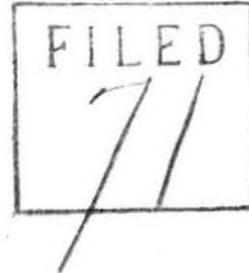


TAXATION: Cities special charter provision for collection of delinquent taxes prevail over general statutes.

October 8, 1934. 10-20



Hon. George W. Petty
Collector of Revenue
Clay County
Liberty, Missouri

Attention: Mr. Clifford T. Halferty.

Dear Mr. Halferty:

Acknowledgment is herewith made of your recent communication requesting an opinion of this office on the following matter:

"Certain officers of the City of Liberty have repeatedly stated to this office that they believe the City Treasurer of such City should proceed under Section 9970 as amended in the Laws of 1933, page 450, to place delinquent city taxes in the hands of this office and that we should proceed to the collection of the same under Article 10, Chapter 59 Revised Statutes of 1929.

The City of Liberty is located in Clay County, Missouri, with an official population 3084 according to census figures and operates under a special charter, Section 1 of Article III of which is in part as follows:

'The City Council shall have power within the City, by ordinance: 1st.- to levy and collect taxes not exceeding $1\frac{1}{4}$ per centum per annum upon the assessed value of all property made taxable by law for state and other purposes, and also to provide for the collection of the same by the sale of all real estate and personal estate within the city in such manner as this Act or the Council of the City by ordinance shall provide.'

It was our impression that said Article 10 only applied to cities of the fourth class, but it

appears that we shall be compelled to decide whether it applies to the City of Liberty and in this connection we respectfully ask the assistance of your office in giving us an opinion as to such application."

I.

DELINQUENT TAXES IN CITIES OF
THE THIRD CLASS COLLECTED UNDER
PROCEDURE ESTABLISHED BY SENATE
BILL 94 BY CITY COLLECTOR.

Under the general statutes applicable to municipal corporations, the City of Liberty, Missouri would be a city of the third class. The general provisions respecting the collection of delinquent city taxes in cities of the third class are found in Article IV, Chapter 38 R. S. Mo. 1929. Senate Bills 94 and 96 as found at pages 425 and 450 Laws of Missouri, 1933, did not amend or repeal any of the provisions set out in the aforementioned article. These two bills dealt entirely with the provisions of Chapter 59, which concerns "Taxation and Revenue." The changes made by these two new acts were confined entirely to that chapter. No change was made in Section 6781, which prescribes the duties of the city collector concerning the collection of delinquent city taxes. This section provides in part:

"The city council shall cause the land and lot delinquent list and the personal delinquent list to be returned to the city collector, who shall be charged therewith and who shall proceed to collect the same in the same manner and under the same regulations as are or may be provided by law for the collection of delinquent lists of real and personal property for State and County purposes.
* * * * *

By reason of this special provision found in the law pertaining to cities of the third class, the city collectors are directed to collect the delinquent taxes of cities of the third class in the same manner and under the same procedure as was then or might thereafter be provided for the collection of state and county taxes. When Senate Bills 94 and 96 were enacted no change was made in this section and it remains the controlling provision respecting the collection of delinquent city taxes in cities of the third class.

Section 9970, which provides that the collectors of all cities and incorporated towns shall certify their delinquent taxes to the county collector to be collected by such collector, has heretofore been construed by our Courts as applying only to towns and villages. It has heretofore been the opinion of this office that such section as reenacted and amended still applies only to towns and villages and does not effect the collection of delinquent city taxes in cities of the third class. (Opinion to State Tax Commission, August 8, 1933.)

We are therefore of the opinion that no duty devolves upon you as county collector to collect the city taxes of the City of Liberty, Missouri, but that the City Collector should proceed in the same manner as is now prescribed by law for the collection of delinquent state and county taxes and collect the delinquent city taxes.

II.

SPECIAL CHARTER PROVISIONS TAKE PRECEDENCE OVER GENERAL STATUTE.

It is noted from your request that the special charter granted the City of Liberty authorizes such city to provide for the collection of its taxes by sale of all real estate and personal property in such manner as the charter or the council of the city by ordinance may provide.

It is a generally recognized rule that special charter provisions takes precedence over the general statutes, especially in matters of procedure, and where fundamental principles are not involved. This is clearly stated in the case of *Kansas City vs. Marsh Oil Company*, 140 Mo. 458. The problem there confronting the court is stated, l. c. 488:

"The inquiry then is, whenever a charter so framed comes under judicial review, is it in harmony with and subject to the laws and Constitution of the State? It is to be observed in this connection that the permission to frame a charter necessarily carries the privilege of providing a system different from that adopted for the State at large, provided it shall not override or collide with the constitutional guarantees and restrictions, and shall not be out of harmony with the general laws of the State. It must be borne in mind that

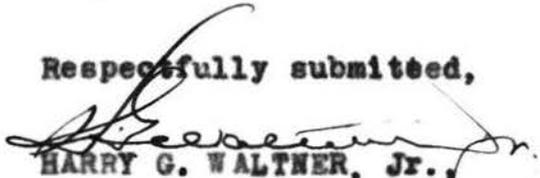
the grant of the right to frame a charter of its own would have been utterly without force and meaningless, if the convention which framed the Constitution and the people who adopted it meant that such a charter should be in all respects exactly like the general charters framed by the general statutes for the class to which it would have belonged but for that privilege. We are forbidden by the rules of fair construction to ascribe such a restricted meaning to words in so important a document as the Constitution of the State. As was said in *State v. Field*, supra: 'Charters thus adopted will of necessity be more or less at variance, and that they will be unlike in many respects, is within the contemplation of the Constitution.' * * *

The Court concludes respecting this issue, l. c. 472:

"We think it was properly ruled that the special charter superseded the general statutes where the two conflicted as to a mere municipal regulation, and we hold that condemnation proceedings to acquire lands for streets, parks, waterworks, sewers and the like, clearly fall within municipal regulation. It follows that notwithstanding the charter did not follow the civil practice as prescribed in the code of practice, it was not for that reason out of harmony with the Constitution or laws, and the special provisions thereof must control, and defendant has no just ground of complaint on that ground." * * *

It therefore appears that if by other provisions of the charter or if by ordinance duly enacted by the City Council, other definite and certain methods for the collection of delinquent city taxes have been prescribed, such provisions should be followed in the collection of the delinquent city taxes, they taking precedence over the general provisions found in Article IV, Chapter 38-R. S. No. 1929.

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED

ROY McKITTRICK,
Attorney General