

FEEES - Of collector and county clerk under Sec. 9945 and 9969.
COLLECTORS - COUNTY CLERKS.

October 9, 1934.

Honorable S. H. Randolph
Collector of Revenue
Carter County
Van Buren, Missouri



Dear Sir:

We have your request for an opinion, which is as follows:

"I would like as soon as possible to have an opinion on the following:-
Sec. 9945, where the Collector, for bringing up the delinquent list and making the back tax book, is allowed ten cents per tract and the county clerk five cents per tract. From what source are they paid? Does the county court draw warrant for same or who pays this fee?

"Under Sec. 9969, "To the Collector for recording the list of delinquent land and lots to be taxed as costs." Does this mean the list published for sale at regular tax sale date the first Monday of November?"

For convenience, we will sub-divide this opinion as follows:

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1. Fees due under Section 9945, Laws 1933, p. 426, to Collector and County Clerk.
2. Fees due under Section 9969, Laws 1933, p. 429, to Collector for recording list of delinquent land.

I.

FEEES DUE UNDER SECTION 9945, LAWS
1933, PAGE 426, TO COLLECTOR AND COUNTY
CLERK.

We have heretofore written an opinion under date of June 28, 1934 addressed to the county clerk at Princeton, Missouri, which in substance holds that the fees provided for in Section 9945, Laws 1933, p. 426 are not chargeable to the delinquent taxpayer. Upon a reconsideration of the entire matter, it may be that the opinion was incorrect. However, it may be that this opinion, as if and when the matter reaches the court for determination, will not be followed. The 1933 tax laws take on the aspects of a Chinese puzzle. It may be that the inconsistencies of these new tax laws will ultimately destroy the life of the law itself, leaving the particular sections now under consideration "mere sound and fury, signifying nothing".

We reiterate, as in our opinion under date of June 28, 1934, that the general rule is that laws imposing taxes are strictly construed against the taxing power and in favor of the person sought to be taxed, so that unless there is express statutory authority for so doing, costs and fees cannot be collected from the taxpayer.

We call your attention to that part of Section 9945, Laws 1933, p. 427, which is as follows:

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" * * all taxes hereafter becoming delinquent shall bear interest until paid as provided by section 9952, and shall also be subject to the same fees, commissions and charges as in this chapter provided for taxes now delinquent, * * "

The above statute relates to the fees of the collector for making and recording the delinquent land list and the fees due the county clerk for comparing and authenticating such record of the delinquent land list.

Section 9948, R. S. No. 1929, still in force and effect in this state, provides that in the back tax book there shall be recorded therein,

" * * the amount of the original tax due each fund on said real estate (and the interest due on the whole of said tax at the time of making said back tax book, together with the clerk's fees then due), in appropriate columns arranged therefor, * * "

It would appear that it was the original intention of the lawmakers to require delinquent taxpayers to meet the additional costs incurred by such delinquency. Section 9950, Laws 1933, p. 427, providing when and how delinquent taxes may be compromised, provides that such compromise may only be made when the delinquent land is not worth the amount of taxes, interests and costs due thereon, as charged in said "back tax books", or recorded list of delinquent land and lots in the collector's office.

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From this section it would appear that it was the intention of the lawmakers that the delinquent taxpayers should assume the burden of such costs.

If the fees provided for in Section 9945 for the collector and the county clerk are paid from the county treasury, then such payment would transfer these extra costs incurred by delinquent taxpayers to the shoulders of the taxpayers who pay their taxes on time. We do not believe such was the intention of the Legislature. In this matter we have constantly kept before us a statement of the St. Louis Court of Appeals (1931), in *State v. Schwartzmann Service, Inc.* 40 S. W. (2d) 479, l.c. 480:

"It is a cardinal rule, universally accepted, that, in the exposition of a statute, the intention of the lawmaker will prevail over the literal sense of the terms; its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from its context; from the occasion and the necessity of the law; from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion. The object of all rational interpretation is to reach the true intent and meaning of the law-making authority, as expressed in the language it has employed to convey the thought. All other rules are subordinate to that great one. The chief canon of construction is that which requires us to find the legislative intent and purpose. The intent and spirit of the legislative act should be made to speak, if such can be done without doing violence to express language."

The above sections quoted in this opinion are a part of Chapter 59, Article 9, specifically dealing with delinquent and back taxes. It will be noted that the language previously quoted herein from Section 9945 of the 1933 Laws refers to charges, as in this chapter provided for taxes now delinquent. Article 9 is the only portion of the entire chapter on taxation that refers to delinquent taxes. An examination of Article 9, covering the subject of delinquent taxes, will reveal that all charges necessarily incurred because of the delinquency of such taxes, whenever specific provision for same is made, are chargeable against the delinquent taxpayer.

We believe that the above statutes are sufficient to tax the fees involved in this opinion against the delinquent taxpayer and not against the county. To tax such costs against the county without specific provision therefor, would be to pay the collector and clerk compensation out of the county treasury, for which there is no specific statutory authority. In Missouri, it must be remembered that a public officer is presumed to render his services gratuitously, unless some specific statutory authorization is found providing for the payment of such services. *King v. Riverland Levy District*, 279 S. W. 195, 1.c. 196 (1926). We find no statutory authority requiring the fees in question to be paid by the county.

It may be urged that since the statute allows fees to the collector and clerk, such is sufficient within itself to make the county liable therefor. It appears that specific statutory authority imposing upon the county the duty to pay such compensation is necessary. The following general rule, taken from 11 C. J. p. 878, Section 50 will suffice:

" * * as a general rule the public is liable for the compensation of a clerk of court only where there

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is specific authority to the officer to make a charge for the service rendered, and a positive statutory provision making the public liable therefor. * * "

It may be urged that since Section 9969, R. S. Mo. 1929 contains the provision,

"Provided, that in no case shall the state, county or city be liable for any such costs, nor shall the county court or state auditor allow any claim for any costs incurred by the provisions of this article."

It was the intention of the Legislature in 1933, by the repeal of Section 9969 and the omission of the above quoted portion from the new statute enacted in lieu thereof, to make the county liable for such costs. However, in view of the well established rule of law in this state, exemplified by the King v. Riverland Levy District case, that portion of the 1929 statute was unnecessary, and its omission from the new section 9969, Laws 1933, p. 429, does not in the least alter the general rule in this state, - that compensation to public officers is allowed only by statutory authority.

It is the opinion of this office that the ten cents fee due the collector for making and recording the delinquent land list, and the five cents fee due the county clerk for comparing and authenticating such record of the delinquent land list, are to be classified under the heading of "charges", as contained in the same statute, and are to be added to the taxes and collected from the delinquent taxpayer and not from the county.

II.

FEES DUE UNDER SECTION 9969, LAWS 1933,

PAGE 429, TO COLLECTOR FOR RECORDING LIST OF DELINQUENT
LAND.

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Under this heading, we are called upon to construe Section 9969, Laws 1933, p. 429, relating to the fees of collector, which in part is as follows:

" * * 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."

Under Section 9952, Laws 1933, p. 430, the words "back tax book" now means the record of the list of delinquent lands and lots in a collector's office, and the "record" of the delinquent land list by the collector, and the certification thereon by the county clerk is construed as the making of the back tax book. It therefore appears that from the delinquent land list, the collector shall "record" the same in his office in a separate book or volume for that purpose, and for such service he shall receive the fee provided for in the above statute, namely, twenty-five cents per tract.

It will be noted that the twenty-five cent fee is "per tract", to be taxed as costs and collected from the party redeeming "such tract". After the tract is once placed in this book or "record", it would appear that for the addition of subsequent years of delinquent taxes against this same tract of land, the collector would receive ten cents per tract, as provided in Section 9945 for each subsequent annual entry of delinquent taxes, and that the one recording of this tract of land and the annual entry thereon of delinquent current taxes by the collector would constitute the permanent record from which lands would be sold under Section 9952b, Laws 1933, p. 430, which is as follows:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some news-

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paper of general circulation and published in the county, * And it shall only be necessary in the printed and published list to state in the aggregate the amount of taxes, penalty, interest and cost due thereon, each year separately stated, * * "

It is, therefore, the opinion of this office that the fees provided for under the above portion of Section 9969, "for recording the list of delinquent land and lots" refers to the permanent record that is to be kept by the collector of all lands and lots upon which taxes are delinquent. The fee provided therein is for the making of that record; the fee does not apply to the copy of that record that is made by the collector for publication in the newspaper, under Section 9952b, Laws 1933, p. 430.

Respectfully submitted,

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APPROVED:

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