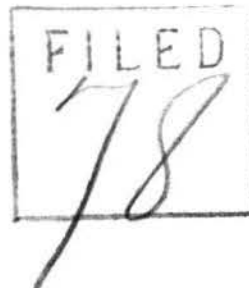


TAXATION: City tax fourth class city inferior to State and County Taxes.

11-9
October 31, 1934.



Hon. O. L. Robuck
City Collector
LaPlata, Missouri

Dear Mr. Robuck:

Acknowledgment is made of your letter of October 20, 1934, requesting an opinion of this office on the following matter:

* * * Can a Collector of a City of the Fourth class, conduct the sale of property for back taxes?

Or should he file the back tax list with the County Collector where the property is to be sold for taxes.

The County Collector of Macon County is selling some property in LaPlata for back taxes and I did not file the City back taxes with him. Will the City loose the taxes or will the city taxes hold on the property and be sold for city taxes if they are not paid.

The property in question in LaPlata, the County had the years of 1929-30-31-32 and 33, while the City of LaPlata has only 1931-32 and 33.

I.

CITY COLLECTOR OF CITIES OF
THE FOURTH CLASS TO COLLECT
CITY BACK TAXES.

It has heretofore been the opinion of this office that by virtue of the provisions of Article VIII, Chapter 38 R. S. Mo. 1929, the City Collector of cities of the fourth class should proceed with the collection of delinquent city taxes in the same manner and at the same time that the County Collector proceeds with

the collection of delinquent state and county taxes. This was the holding in the opinion of October 8, 1933, to the State Tax Commission of this State. Therefore, you are the party to conduct the sale rather than the county collector.

II.

LIEN OF STATE AND COUNTY TAXES
SUPERIOR TO THAT FOR CITY TAXES.

The tax lien of city taxes in cities of the fourth class is established by Section 6994 R. S. Mo. 1929. A portion of this Section reads as follows:

* * * A lien is hereby created in favor of such city against the same, which said lien shall be superior to all other liens or encumbrances except the lien of the state for state, county or school taxes.

By the foregoing provision, the superior character of the State, county and school taxes is recognized, and the lien of taxes of your city is determined to be junior to that for state, county and school taxes. However, the mere sale of the property this November for state and county taxes will not entirely eliminate your lien for city taxes, as the taxpayer cannot defeat the city's lien by permitting the land to be sold on the 5th of November and then a few days later redeeming the property from such sale. In such a case the party redeeming would be in the same condition so far as your city taxes are concerned as if the sale for state and county taxes had never taken place.

III.

SALE WITHIN FIVE YEARS OF
DELINQUENCY IS COMPLIANCE
WITH LAW.

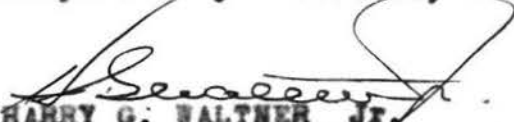
The 57th General Assembly in Extra Session, passed Senate Bill 54, found at page 154, Laws of Missouri Extra Session, 1933-34, which section provides in part as follows:

"Sec. 9961. Limitation of actions--No proceeding 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."

In an opinion of this office dated September 4, 1934, to Charles M. Hay, City Counselor of the City of St. Louis, this office construed the foregoing Section as intending to vest discretion in the Collector in the advertising and sale of certificates on delinquent lands and lots, provided that he must bring such proceeding within five years of the date of delinquency. Therefore, you would not be required to bring this action for the collection of your 1931 City taxes until 1936, as a proceeding started then would be within the five years required. I assume your 1931 city taxes were not delinquent until January 1, 1932.

It is therefore the opinion of this office that you would not be required under the law to hold a sale for delinquent city taxes for the years 1931, 1932 and 1933 this November.

Respectfully submitted,


 HARRY G. WALTNER, JR.
 Assistant Attorney General

APPROVED:

 ROY McKITTRICK,
 Attorney General

HGW:MM