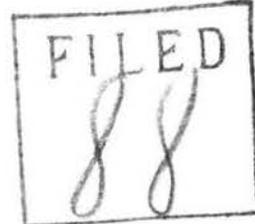


TAXATION: Procedure established by Senate Bill 94 applicable in cities of the third class.

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September 5, 1934.



Hon. Robert T. Stephens
City Attorney
Excelsior Springs, Missouri

Dear Mr. Stephens:

Your communication of July 10, 1934, has been relayed to this office by the Honorable James S. Rooney, Prosecuting Attorney of Clay County. Your request reads as follows:

"You may have already obtained an opinion from the attorney general concerning the sale of delinquent property for taxes as provided by the laws of Missouri for 1933 on pages 425 to 449 inclusive. I have heard so many different things concerning this that I would like to have an opinion from the Attorney General as to whether or not this law is applicable to cities of the third class. Also when that law went into effect. Whether on April 7, 1933 or 90 days thereafter. I doubt seriously whether this Act had an emergency clause in it.

Also what becomes of suits filed in the circuit court under the old law after the effective date of this Act.

I would appreciate it very much if you would give me the opinion of the attorney general in reference to the above questions."

We shall deal with your questions in the order asked.

I.

DELINQUENT CITY TAXES OF THIRD
CLASS CITY COLLECTED UNDER PRO-
CEDURE ESTABLISHED BY SENATE BILL
94.

The provisions for the collection of delinquent city taxes are found in the Chapter entitled "Municipal Corporations" and numbered 38 of the Revised Statutes of Missouri, 1929. Article IV sets forth specifically how delinquent city taxes of third class cities are to be collected. Senate Bill 94 did not alter, repeal or amend any Section in this Chapter but is confined to the repealing of certain sections of Chapter 59 and the reenactment of other sections in lieu thereof. However, we find that Section 6781 prescribes the duties of the city collector in the collection of delinquent taxes in cities of the third class and provides in part:

"The city council shall cause the land and lot delinquent list and the personal delinquent list and 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 taxes for state and county purposes: * * *

By this provision the Legislature has adopted the same procedure for the collection of delinquent city taxes in cities of the third class as are now or may be established for the collection of delinquent State and County taxes.

There is no provision in Chapter 38 and particularly Article IV thereof for the transferring of these duties from the city collector in cities of the third class to county officials. Although the 57th General Assembly in Extra Session reenacted Section 9970 of the Laws of 1929, with a slight modification (page 451 Laws of Missouri, 1933), it has heretofore been held by this office that that Section does not apply to cities of the third class (opinion to State Tax Commission, August 8, 1933).

We therefore are of the opinion that your City Collector should proceed with the collection of delinquent city real estate

taxes this year, in the same manner as is prescribed by law for the collection of delinquent State and County taxes, to-wit, as provided for in Senate Bill 94, page 425 et seq. Laws of Missouri, 1933.

II.

SENATE BILL 94 PAGE 425 ET SEQ.
LAWS OF MISSOURI, 1933, NOT
EFFECTIVE UNTIL JULY 24, 1933.

An examination of the Senate Journal of the 57th General Assembly in Regular Session, page 669, reveals that although Senate Bill 94 was passed by a vote of nineteen to eleven, the Emergency Clause to Senate Bill 94 failed to adoption by a vote of eighteen to twelve. Also, referring to page 449, Laws of Missouri, 1933, it is apparent that Section 3 of the act which constituted the Emergency Clause was not adopted, as said Section 3 does not appear therein. No Emergency Clause being attached to the Act it became operative in accordance with the provisions of the Constitution, to-wit, ninety days after the adjournment of the General Assembly.

III.

SUITS FILED BEFORE JULY 24, 1933,
MAY BE DISMISSED AND ENFORCED UNDER
SENATE BILL 94, OR MAY BE PROSECUTED
TO FINAL JUDGMENT UNDER PRIOR LAW.

We direct your attention to Section 9962b of Senate Bill 94, found at page 444, Laws of Missouri, 1933, a portion of which Section reads as follows:

* * * provided however, that nothing herein contained shall be construed to affect the right of the county collector to proceed to final judgment and foreclosure for taxes upon which suit had been instituted prior to the effective date of this act, but not in final judgment, nor to prejudice the rights of collection of any costs or commissions attaching in such cases which were valid under the tax law existing at the time of institution of such suits. As to taxes merged in judgment at the effective date of this act the foreclosure of the tax lien and proceedings relative thereto shall be had under the provisions of the law as such law existed prior to the passage

of this act, and as to suits for delinquent taxes instituted, but not merged in judgment, at the effective date of this act the collector shall have the right to proceed to final judgment and foreclosure of the tax lien under the provisions of the law as it existed prior to the passage of this act, or such collector may, in his discretion, dismiss such suits and proceed to foreclosure of the tax lien under the provisions of this act, subject to the preservation of rights to all valid costs and commissions and that may have already attached in such character of suits under the law as it existed prior to the passage of this act."

By virtue of this Section the option is given to the County Collector to proceed with the suit which had been instituted prior to the effective date of Senate Bill 94 and collect the taxes after judgment and execution, or to dismiss the suit and advertise the property for sale in accordance with Senate Bill 94. Although this Section saves the costs which have accrued on these taxes, we direct your attention to a subsequent enactment of the 57th General Assembly in Extra Session. This enactment is known as House Bill 124, and found at page 166, Laws of Missouri, Extra Session, 1933-34. This Section reads as follows:

"Section 1. PENALTIES AND INTEREST--HOW COMPUTED.--That all penalties and interest on personal and Real Estate Taxes, delinquent for the year 1932 and prior years shall be computed after December 31, 1933, on the same penalty basis as the taxes delinquent for the year 1933 until paid."

This is a relief measure enacted for the benefit of the taxpayer by remitting part of the penalties which accrued on personal and real estate taxes for the year 1932 and prior years.

This enactment is a subsequent expression of the legislative will and therefore must be considered by you when making settlement of your back tax suits.

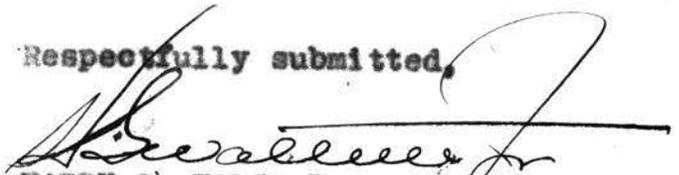
Hon. Robert T. Stephens.

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September 5, 1934.

It is therefore the opinion of this office that as to suits filed for the enforcement of delinquent real estate taxes prior to July 24, 1933, the Collector has the option of proceeding with the collection of such taxes under the law as existed at that time, or under the provisions of Senate Bill 94 of the Regular Session, all subject to House Bill 124, page 186, Laws of Missouri, Extra Session, 1933-34.

Respectfully submitted,



HARRY G. WALTHER, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

HGW:MM