

TAXATION & REVENUE: Authority of Collector to employ attorney to assist in collection of delinquent personal property taxes.

January 3, 1935.



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Gentlemen:

Your request for an opinion dated November 28, 1934, has been assigned to me. In said request you state as follows:

"At the request of Mr. Lon E. Leslie, Collector of Pettis County, Missouri, I beg to request for him an opinion on Section 9952 relating to delinquent and back taxes, which repealed Section 9952, Article 9, Chapter 59, of the Revised Statutes of Missouri, 1929.

In view of the acts passed by the 57th General Assembly of Missouri, relating to taxation and revenue, Mr. Leslie desires to know whether or not he can employ such attorneys as he may deem necessary and institute, at this time, suits to collect delinquent and back taxes contained in the Back Tax Book and which are due and unpaid at this time.

It seems that some collectors are proceeding to file suits for taxes contained in their back tax books at this time. Mr. Leslie does not want to institute any suits unless he is sure that he is authorized to do so under these new Acts passed by the 57th General Assembly.

Will you kindly advise Mr. Leslie at your earliest convenience so that he may proceed to file suits if authorized to do so."

In the foregoing request you do not designate which Section 9952 you refer to. Senate Bill 94 repealed Section 9952 of the 1929 revision as did House Bill 44. Each reenacted new sections by that number. Senate Bill 94 found at page 425 et seq. and House Bill 44 found at page 465 Laws of Missouri 1933. I presume that it is the reenactment of Section 9952 contained in House Bill 44 which caused your collector to inquire as to the authority to bring suit for delinquent and back taxes. We think that it is recognized that the term "back taxes" generally applies to real estate taxes and our remarks are made in reference to delinquent real estate taxes.

The 57th General Assembly by the enactment of Senate Bill 94 radically changed the method of procedure in the collection of delinquent real estate taxes. Section 9952 of the 1929 revision together with a number of other sections thereof were repealed. House Bill 44 purported to repeal Section 9952 of the 1929 Revision and to enact a new section by the same number. The only change in Section 9952 before and after the passage of House Bill 44 was the proviso attached to such Section. This proviso affected only Greene County, Missouri and provided that the Prosecuting Attorney should act as delinquent tax attorney for such county.

In an opinion of this office dated August 8, 1933, to the State Tax Commission of this State, this office held that Senate Bill 94 and House Bill 44 were in Pari Materia and were to be construed together. It was held that House Bill 44 in no way affected the procedure established by Senate Bill 94 after the effective date of the latter named enactment, to-wit, July 24, 1933, and that after such date there was no statutory authority for the enforcement of delinquent real estate taxes by suit. This opinion was affirmed and enlarged upon in an opinion of this office dated September 4, 1934 to Hon. Charles M. Hay, City Counsellor of the City of St. Louis.

In the fall of 1934 a proceeding in prohibition was instituted in the Supreme Court to enjoin the Judge of Division No. 1 of the St. Louis Circuit Court from proceeding to enforce the lien of state taxes by means of suit. Edmund Koeln as collector of the City of St. Louis had instituted a suit in said court to enforce the payment of delinquent real estate taxes alleging that he was authorized to do so under the provisions of House Bill 44 hereinbefore referred to and that Senate Bill 94 was unconstitutional and unworkable. This case was entitled State ex rel. Karbe vs. Bader et al. being No. 33955. In the decision handed down on December 23, 1934, Judge Leedy writing the opinion for the Court held:

"There was nothing in House Bill #44 in the nature of new legislation. Its sole object was to amend Section 9952 (the effective law at the time House Bill #44 was introduced) insofar as it related to back tax attorneys in counties of a designated population. It seems obvious, and we hold that the nominal reenactment of section 9952 by House Bill #44 was not intended to, nor did it have the effect of impliedly repealing or otherwise disturbing the Jones-Munger act. We think that by attaching an emergency clause to House Bill #44, the Legislature intended that it should be operative only until such time as Senate Bill #94 took effect. The latter measure not having received executive approval at the time the former was passed. But we must hold bad, as the parties tacitly concede, the emergency clause just mentioned because invalid on its face and, therefore, wholly ineffectual to make House Bill #44 operative upon being signed by the Governor, and so upon the happening of the latter event House Bill #44 became nugatory, and as if never passed. This ruling is in harmony with controlling canons of construction, and, as we believe, causes the true legislative intent to speak."

It therefore conclusively appears that there is no authority to institute suit for delinquent real estate taxes at this time.

Our next concern is the method of collecting delinquent personal taxes. Section 9940 R. S. Mo. 1929, is the law, relative to the collection of delinquent personal property taxes. This Section adopts that part of Section 9952 R. S. Mo. 1929, relative to the employment of attorneys to collect delinquent personal property taxes. However, Section 2, Laws of 1933, page 429, repeals said Section 9952 R. S. Mo. 1929, and we are confronted, apparently, with the proposition of the law, relative to hiring attorneys to collect delinquent personal property taxes, being repealed.

It is evident that the legislature was only attempting to change the law respecting the collection of delinquent real estate taxes and, apparently, had no intention of changing the method of collecting delinquent personal property taxes, as set forth by Section 9940 R. S. Mo. 1929.

Said Section 9940 refers and adopts into it any sections pertaining to the employment of attorneys found in Article 9, Chapter 59, so that Section 9952 R. S. Mo. 1929, by this method of adoption

was incorporated into Section 9940, and became a part thereof.

In *Crohn v. Telephone Co.*, 131 Mo. App. 313, 1. c. 320, the Kansas City Court of Appeals, in discussing such a method of adoption by reference in statutes, said the following:

"In *Endlich on Interpretation of statutes*, Section 85 it is said: 'An act adopting by reference the whole or a portion of another statute, means the law as existing at the time of adoption and does not adopt any subsequent addition thereto or modification thereof.' This rule is generally recognized, 'Sutherland on Statutory Construction, Section 257; 26 Am. and Eng. Enc. of Law (2Ed.), 714; *Postal Tel. Co. v. Railroad*, 89 Fed. 190; *Jones v. Dexter*, 8 Fla. 275; *Culver v. People*, 161 Ill. 96; 43 N. E. 813; *Darmstaeter v. Maloney*, 45 Mich. 621, 8 N. W. R. 574; *Matter of Main Street*, 98 N.Y. 454; *Commonwealth v. Kendall*, 144 Mass. 357; *Gaston v. Lamkin*, 115 Mo. 20.) Further it is said by the same author (Section 492); 'Where the provisions of a statute are incorporated by reference in another (where one statute refers to another for the powers given or rules of procedure prescribed by the former, the statute or provision referred to or incorporated becomes a part of the referring or incorporating statute; and if the earlier statute is afterwards repealed, the provisions so incorporated, the powers given, or rules of procedure prescribed by the incorporated statute, obviously continue in force, so far as they form part of the second enactment.' To the same effect is *Gaston v. Lamkin*, 115 Mo. 20, where the Supreme Court of this State said: 'The general rule governing in such cases seems to be that where one statute refers to another for rules of procedure prescribed by the former, the former statute, if specifically referred to, becomes a part of the referring statute, and the rules of procedure prescribed by the earlier statute, so far as they form a part of the second enactment, continue in force, although the earlier

statute be afterwards modified or repealed.'

Under these rules, that part of Section 2865, relating to parties and procedure became by adoption an integral part of Section 2866 to the same extent, as though it had been written into the latter statute and neither a subsequent amendment nor repeal of section 2864 could affect the referring section."

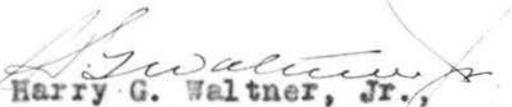
The above case is analogous to the situation at hand and is authority for our conclusion.

It is therefore the opinion of this office that delinquent real estate taxes should be collected under and by virtue of the provisions of Senate Bill 94, page 425 Laws of Missouri 1933, and that such does not require the employment of an attorney.

It is our further opinion that delinquent personal taxes should be collected under the provisions of Section 9940 R. S. Mo. 1929, and that into such section there should be incorporated that part of Section 9952 R. S. Mo. 1929 which reads:

"and for the purpose of collecting such tax and prosecuting suits for taxes under this article, the collector shall have power, with the approval of the county court* * * *to employ such attorneys as he may deem necessary, who shall receive as fees such sum, not to exceed etc;* * *"

Respectfully submitted,


Harry G. Waltner, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General.

HGW:MM