

TAXATION & REVENUE: Senate Bill 94 exclusive law for enforcing delinquent state and county taxes and taxes of cities of third and fourth class.

1-21
January 18, 1935.



Hon. Harry Mitchell
City Collector
Anderson, Missouri

Dear Mr. Mitchell:

Acknowledgment is herewith made of your recent request for an opinion of this office, a part of which reads as follows:

"The question with me is, shall the collectors of the counties and of cities of the 4th class bring sale procedure under Senate Bill No. 94 as shown on page 425 and following pages of 1933 session acts, or do we collectors have the choice of bringing suit as outlined in House Bill No. 44 on page 465 of 1933 session acts, similar to the old method of bringing suit through the Circuit Court and selling by sheriff sale.

Please advise me if we have our choice or do we have to make the sale according to Senate Bill No. 94.* * * *"

On August 8, 1933, shortly after the effective date of Senate Bill 94, page 425 et seq. Laws of Missouri 1933, this office issued its opinion to the State Tax Commission holding that House Bill 44, page 465, Laws of Missouri 1933, was effective, insofar as it purported to authorize the institution of suits, only until the 24th of July, 1933, the effective date of Senate Bill 94, and that thereafter Senate Bill 94 provided the one and only method by which the payment of delinquent taxes could be enforced in this State.

On December 23, 1934, the Supreme Court passed upon this very problem. In the case of State ex rel. Karbe vs. Bader, et al., not yet reported, the court held that House Bill 44 was but a temporary measure effective only until the date that Senate Bill 94 became the law. In this opinion Judge Leedy speaking for the Court stated:

"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."

CONCLUSION.

It therefore conclusively appears that Senate Bill 94 now prescribes the one and only method by which delinquent taxes for the State and county and for cities of the third and fourth classes can be collected at this time.

Respectfully submitted,

HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.

HGW:MM