

DELINQUENT TAXES: If County Court compromises tax's in accordance with Sec. 9950, Laws 1933, p. 427, County Collector is not personally liable.

December 30, 1936.

12-31



Mr. Sam A. Baker,  
Collector of Revenue,  
Bollinger County,  
Marble Hill, Missouri.

Dear Sir:

This department is in receipt of your letter requesting an opinion based on the following facts:

"We are having a little difference of opinion over compromising State and County taxes after it has been advertised for sale.

"I offered a tract of land (160 acres) which had about \$170.00 taxes and costs against it and did not receive a bid. Now the agent for this Donaldson Estate, having about 3,000 or 4,000 acres in this county, has sold this particular 160 acres for \$300.00 and wants the county court to cut the taxes 50%. The Donaldson Estate is not willing to pay taxes on all their land in this county on a basis of 50% but are picking out the best tracts, paying on them and letting the State and County hold their worthless land.

"I have refused to accept payment so far on this land under the impression that the County Court has no authority to compromise taxes unless they are reasonably sure the land is not worth the taxes. Am I liable to the State and County for their tax if, after the court compromises said taxes and I accept payment, the question should arise and proven that the land was really worth the original amount of taxes?"

We assume that the County Court of your county has attempted to compromise the taxes mentioned above under Section 9950, Laws of Mo. 1933, p. 427, which is as follows:

"Whenever it shall appear to any county court, or if in such cities the register, city clerk or other proper officer, that any tract of land or town lot contained in said 'back tax book' or recorded list of delinquent land and lots in the collector's office is not worth the amount of taxes, interest and cost due thereon, as charged in said 'back tax book' or recorded list of delinquent land and lots in the collector's office or that the same would not sell for the amount of such taxes, interest and cost, it shall be lawful for the said court, or if in such cities the register, city clerk or other proper officer, to compromise said taxes with the owner of said tract or lot, and upon payment to the collector of the amount agreed upon, a certificate of redemption shall be issued under the seal of the court or other proper officer, which shall have the effect to release said lands from the lien of the state and all taxes due thereon, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office; and in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot."

The above quoted section imposes no duty on the county collector with reference to a compromise of taxes. We are further assuming that the compromise is without fraud, mistake or misrepresentation. If this be true, then the question as stated in your letter resolves itself into liability on your part as

collector. Again referring you to Section 9950, which contains this sentence: "and in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land or town lot, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due \* \* \* " we think the same absolves you from any liability.

In the decision of State, to Use of Pacific Railroad Co. v. Dulle, 48 Mo. 282, the Court said:

"Where a statute made all property liable to taxation, and empowered the several county courts to levy such sums as might be annually necessary to defray the expenses of their successive counties by taxes on all property made taxable by law for state purposes, it conferred jurisdiction, and was a sufficient warrant for a collector to justify him in obeying the process and mandate placed in his hands; and he will be protected, notwithstanding irregularities in the mode of the assessment."

And, in the case of Brown v. Harris, 52 Mo. 306, it was held that a ministerial officer is protected in executing a mandate of a court which has power to issue it.

#### CONCLUSION

It is the opinion of this department that if the County Court compromises the taxes in question in accordance with Section 9950, supra, in the absence of any fraud, so far as you are personally concerned, there is no liability on you as County Collector.

Respectfully submitted,

APPROVED:

OWN:AH

\_\_\_\_\_  
J.E. TAYLOR,  
(Acting) Attorney General

OLLIVER W. NOLEN,  
Assistant Attorney General.