

TAXATION: Collection of delinquent real estate taxes in cities of the third and fourth classes.

January 2, 1936.



Honorable Thomas S. Denny
City Attorney
Salisbury, Missouri

Dear Mr. Denny:

Your recent request for an opinion of this office has been received and we are glad to render you an opinion on the following matter:

"If you have on file a ruling upon the question of whether or not proceedings can be instituted to enforce payment of taxes after five years have elapsed, I would greatly appreciate a copy of such ruling also."

And I am greatly concerned with another question along this line. Suppose the county has not yet listed the real estate for sale, as for instance, in the case where the county taxes are paid, and the city taxes are not. Under such circumstances, does the rule that the city cannot proceed to enforce payment independently of the county apply?"

I.

PROCEEDINGS FOR THE COLLECTION
OF DELINQUENT TAXES MAY NOT BE
INSTITUTED AFTER FIVE YEARS FROM
DATE OF DELINQUENCY.

The Legislature in 1935 repealed Section 9961, page 154, Laws of Missouri Extra Session 1933-34, which Section reads as follows:

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"No proceedings 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, provided that proceedings for the sale of lands and lots on which taxes are delinquent for the year 1928 may be commenced at any time prior to December 31, 1934. Provided further, that in suits or actions to collect delinquent drainage and/or levee assessments on real estate such suits or actions shall be commenced within five years after delinquency, otherwise no suit or action therefor shall be commenced, had or maintained,"

and enacted in lieu thereof a new Section 9961, page 405, Laws of Missouri 1935. This new section eliminated the phrase in the old section authorizing the institution of proceedings for the collection of delinquent 1928 taxes at any time before December 31, 1934, and left this Section a straight five year statute of limitations.

CONCLUSION.

It is therefore the opinion of this office that the initial proceedings for the collection of delinquent taxes must be instituted within five years of the date of delinquency of the tax, the payment of which is sought to be enforced.

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II.

CITY COLLECTOR CANNOT INSTITUTE
SUIT FOR DELINQUENT CITY REAL
ESTATE TAXES.

This office on the 8th day of August 1933, issued an opinion to the State Tax Commission relative to the collection of delinquent real estate taxes due cities of the third and fourth classes and in this opinion it is held that the provisions of Section 6781, pertaining to cities of the third class and Section 6996, pertaining to cities of the fourth class, R. S. Missouri 1929, adopted the procedure set forth in the Jones-Munger Act, page 425 Laws of Missouri 1933, and that after the enactment of such Jones-Munger Act the city collectors of such cities should proceed to enforce the collection of all city real estate taxes in the same manner that the county collectors proceed to collect delinquent real estate state and county taxes.

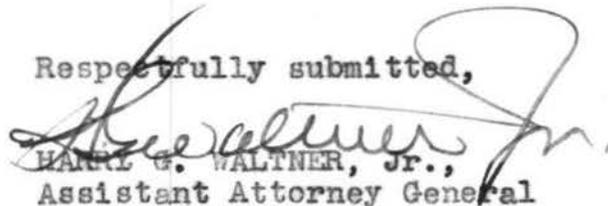
We herewith enclose to you a portion of that opinion which deals with the collection of all city taxes and includes cities of the third and fourth classes. From this opinion you will see that it is immaterial whether or not the County Collector is proceeding to enforce the collection of delinquent state and county taxes as the collection of such taxes is separate and apart from the collection of delinquent city taxes although the same general procedure is followed in both cases.

The Supreme Court of Missouri has heretofore held that after the effective date of the Jones-Munger Law the County Collector was without authority to institute suit for the collection of delinquent real estate taxes due for state and county purposes. State ex rel. Karbe vs. Bader, 78 S. W. (2d) 835. That decision is equally applicable to the collection of delinquent real estate taxes due cities of the third and fourth classes.

CONCLUSION.

It is therefore the opinion of this office that city collectors of cities of the third and fourth classes are unauthorized to institute suit for the collection of delinquent city real estate taxes but should proceed to enforce the same at the same time and in the same manner as the county collector proceeds to enforce the collection of delinquent state and county taxes on real estate.

Respectfully submitted,



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APPROVED:

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