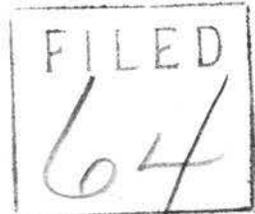


OFFICER'S QUALIFICATIONS: Assessor not entitled to qualify if owing delinquent city taxes.
MUNICIPALITIES:

June 26, 1936

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Hon. L. I. Morris,
Prosecuting Attorney,
Lafayette County,
Lexington, Missouri.

Dear Sir:

We have received your request which is as follows:

"At the request of Mr. H. F. Duensing, Mayor of the City of Concordia, Missouri, I wish to submit the following set of facts and respectfully request for the city of Concordia an opinion concerning the status of Otto Bredehoeft, City Assessor.

"Otto Bredehoeft, the duly elected, qualified and acting Assessor for the City of Concordia, was re-elected at the last city election in April, 1936. The Board of Aldermen question the right of Mr. Bredehoeft to hold office on the ground that he was disqualified for failing to pay his city taxes. It seems that Bredehoeft and a Mr. Roepe were doing business in the city, a partnership arrangement under which they continued to do business over a period of several years. At the time of Bredehoeft's election the firm's taxes were five years in arrears and for that reason the Board of Aldermen question the right to hold the office to which he was elected and have refused to qualify him as City Assessor. The property and business on which this tax was assessed and is now unpaid is about to be foreclosed on by holders of the mortgage on the premises and the business.

"I am told that Mr. Bredehoeft has written your office setting out the facts in the case and that your department stated that only through the Prosecuting Attorney's Office could this opinion be had. It is, therefore, respectfully requested that this opinion be given the undersigned.

"For your information the City of Concordia is a city of the Fourth Class."

Tersely stated, we construe your request to be as follows:

"A given individual is elected Assessor of a city of the fourth class. Such person so elected was previous to the election a partner with another, said partnership owning personal property, and at the time when the Assessor presents himself for qualification as such Assessor, the Board of Aldermen raise the question of his right to so be inducted into office, and assign as their reason therefor that the firm of which he was a partner now owes city taxes that are delinquent for five years next preceding this time."

Section 6951, R. S. Mo. 1929, among other things, provides that:

" * * * the board of aldermen may provide by ordinance for the election of city assessor * * *."

Section 6960, R. S. Mo. 1929, provides:

"The mayor, with the consent and approval of the majority of the members of the board of aldermen, shall have power to appoint a * * * city assessor * * *."

Section 6969 provides:

"All officers elected or appointed to offices under the city government shall be

qualified voters under the laws and Constitution of this state and the ordinances of the city. No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office, or who is not a resident of the city."

Section 6970, among other things, provides:

"Every officer of the city and his assistants, and every alderman, before entering upon the duties of his office, shall take and subscribe to an oath or affirmation before some court of record in the county, or justice of the peace in the township, or the city clerk, that he possesses all the qualifications prescribed for his office by law; that he will support the Constitution of the United States and of the state of Missouri, the provisions of all laws of this state affecting cities of this class, and the ordinances of the city, and faithfully demean himself while in office; which official oath or affirmation shall be filed with the city clerk."

It cannot be said that the Assessor-elect in question does not owe city taxes when the partnership of which he is a partner owes such delinquent city taxes. By the terms of Section 6969 the Assessor-elect is prevented from qualifying for such office under such conditions.

While your inquiry does not reveal whether your city council has enacted an ordinance under which the Assessor is elected, under the provisions of Section 6951, or whether he has been appointed under the provisions of Section 6960, it is immaterial whether he was elected or appointed, because Sections 6969 and 6970 lay the prohibition against his being inducted into office, regardless of whether he be appointed or elected to such office under city ordinances. And under the provisions of Section 6970, he would be swearing falsely that he possessed all the qualifications prescribed for his office by law, if he, either as an individual or as a member of a partnership, at that time owed delinquent city taxes.

CONCLUSION

It is our opinion that a person who is elected or appointed Assessor of a city of the fourth class is not entitled to qualify as such Assessor when he personally, either as an individual or as a member of a partnership, owes delinquent city taxes, and that a partnership of which he is a member or was a member at the time taxes accrued and became payable, which has not paid such taxes, is delinquent and in arrears with reference thereto, and that because of such relationship existing between him and the partnership, he is disqualified from being inducted into the office of Assessor as long as said taxes remain unpaid, but that if and when said city taxes are paid, the bar of their delinquency is removed and such prohibition would no longer exist.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

DW:HR