

COLLECTORS: COUNTY COURTS: Collector is required to advertise land for sale for collection of delinquent taxes, and County Court can not legally justify failure to do so.

September 4, 1936.

Honorable James Wells,
County Collector,
Buchanan County,
Court House,
St. Joseph, Missouri.



Dear Sir:

We acknowledge your request of August 29th, which is as follows:

"I was informed today by the presiding judge of the county court that the appropriation for payment of advertising for delinquent lands for sale, would not be made. That means in other words that publishers would be advised by the court that they will not approve the payment of the advertising bill and also means that I will be unable to comply with Section #9952 B Session Acts of 1935, which requires me to advertise for three consecutive weeks, the final advertisement to appear at least 15 days prior to the first Monday in November.

"I cannot blame the court, for last year at a cost of about \$2200 for preparation and advertising said lands, we finally sold 31 tracts for a total of \$2878.95, which as far as the county revenue is concerned, shows a loss of approximately \$2400. This of course is bad business.

"There is no politics in this and there is no ill feeling between the court and myself. It is only a matter of spending about \$6 of the county's money in order to get \$1 in return.

"Is there any way in the world I can keep from spending this money and if not, what proceedings must I take to force the county court to appropriate this bill."

Section 9952b, Laws of Missouri, 1935, p. 403, among other things, provides:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. * * * * The expense of such printing shall be paid out of the county treasury and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed one dollar for each description, which cost of printing at the rate paid by the county shall be taxed as part of the costs of the sale of any land or lot contained in such list."

thus: 15 Corpus Juris, p. 562, Section 264, states the law

"One who asks payment of a claim against a county must show some statute authorizing it or that it arises from some contract express or implied which finds authority of law. In other words, no claims are chargeable on a county treasury nor can they be paid therefrom except such as the law imposes on the county or empowers it to contract for, either expressly or as a necessary incident, and no officer of the county can charge it with the payment of other claims, however meritorious the consideration, or whatever may be the benefit the county may derive from them, and where a statute prescribes that certain things shall be done at the expense of the county by certain officials of the county, or by persons designated by them,

only such officials or persons designated can put the county to expense for such items. On the other hand, where certain expenses are declared by statute to be county charges, a county board cannot by resolution or ordinance provide that such expenses shall not be paid unless incurred in a particular manner, or make anything a prerequisite to their performing the duty of auditing such accounts. Services rendered to a county in pursuance of a legal employment, for which no specific compensation is provided, are contingent charges against the county. Also, in the absence of constitutional limitation or restriction, a legislature may require a county board to audit and pay a claim for which no legal liability existed on the part of the county previous to the passage of the statute, * * *."

In the case of *Sayler v. Nodaway County*, 159 Mo. 520, the Supreme Court of this state had before it the question of determining whether the County was liable for the payment of the postage which was necessarily used by the Probate Judge of Nodaway County in the performance of his official duties. The statute provided that the necessary expense incurred by the Probate Court "for books, stationery, furniture and other necessaries for the office" shall be paid by the County. The County declined to pay this, but the Supreme Court held that it was obliged to pay it, saying that it was among the necessaries of the office within the meaning of the statute, and among other things, saying, l. c. 524:

"Certainly everything that he is directed to use, or that must necessarily be used in the performance of a designated act or acts required to be performed by him, should be held to be included within the meaning of that term, unless something previously or subsequently used in the section or act so providing, should clearly indicate a contrary intention."

In that case the court held the County to be under the legal obligation of paying for said bill incurred by the official in the performance of his duty, and the statute under which such conclusion was reached did not in terms include the item of postage stamps.

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In the instant case the statute in terms requires the County to pay this bill for advertisement which the statute requires the Collector to place in the papers, which, in our view, is a much more decisive command to the County Court to pay this bill than was the command that was considered in the Saylor case.

The Collector of Revenue may not only be impelled by his desire to faithfully perform his official duty to see that lands are properly advertised for sale in order to collect the delinquent taxes, but another reason why he should be zealous in seeing that lands are advertised according to the course set forth in the statute providing for the sale of lands for the collection of delinquent taxes is that if he failed to so advertise such lands, he might be confronted with difficulties in his annual settlement with the State Auditor, if that official were to raise the question that he had not faithfully advertised such lands in conformity with the requirements of the statute, and therefore was guilty of a breach of his bond as Collector in not faithfully and punctually collecting and paying over the state revenues.

CONCLUSION

It is our opinion that it is the duty of the County Collector of Buchanan County to advertise the real estate for sale pursuant to the terms of the statute, Laws of Missouri, 1935, page 403, and that the County Court has no authority by an order of record made by it, nor in any other way, to relieve him of such duty, nor to change or modify the provisions of said law passed by the Legislature, and that the bill for said advertising within the limits prescribed by said statute, when incurred by the Collector in so performing his duty, is a proper and legal charge against the county, and that the County Court is obliged to pay such bill, and that such obligation may be enforced in the courts on their failure to so pay it.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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