

TAXATION: County Collector unauthorized to collect delinquent real estate taxes due cities of the fourth class, is without authority to sell property to enforce such collections, and is entitled to no commission on any such taxes collected.

May 8, 1937

5-10



Hon. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Mr. Stillwell:

We are in receipt of your communication of recent date wherein you ask the three following questions:

"1. Was it mandatory upon the Collector of Revenue of this County to collect all delinquent city taxes and assessments certified to him by the Collector of the City of Palmyra as being delinquent and unpaid?

2. If, in your opinion, question number one is answered in the affirmative, was it proper for said collector, under the provisions of the Jones-Munger law to sell this property because of delinquent city taxes?

3. Could commissions, penalties, etc., collected by the county collector on delinquent city taxes be retained by him as a non-accountable commission?"

We will answer your inquiries in the order in which they are made.

I.

County Collector may not collect delinquent real estate taxes due city of the fourth class.

On August 8, 1933, this office rendered an opinion to the State Tax Commission, wherein it considered the duties of the city and county collectors under the provisions of Senate Bill 94. In respect to the collection of delinquent real estate taxes due cities of the fourth class the following conclusion was reached in that opinion:

"It is therefore the opinion of the office that Senate Bill 94 is applicable to Cities of the Third and Fourth Classes in so far as it is prescribing the method and manner of the collection and enforcement of the payment of the taxes, but any proceedings had relating thereto are to be conducted by the city collector consistent with the requirements of Articles 4 and 5 of Chapter 38, 1929 Revision."

We herewith enclose to you a portion of that opinion dealing with the duties of the various city collectors and refer you particularly to that part of the opinion found on the next to the last page and the preceding page, which deals with the duties respecting the collection of delinquent real estate taxes in cities of the fourth class. From this you will readily see that the county collector of revenue has nothing whatsoever to do with the collection of such taxes, but that it is the duty of the city collector of the respective cities to proceed to collect the same at the same time and in the same manner as the county collector collects delinquent state and county taxes.

II.

County Collector may not sell property for delinquent city taxes due cities of the fourth class.

By virtue of our conclusion under part one of this opinion it is quite certain that if the county collector has no authority to collect delinquent real estate taxes due cities of the fourth class he likewise has no authority to proceed to sell the property on account of such delinquencies. The enforcement of such delinquent taxes rests with the collector of such municipality and it is his duty to proceed to sell the same pursuant to the terms of the Jones-Munger law.

III.

County Collector not entitled to commission for collecting delinquent real estate taxes due cities of the fourth class.

By virtue of our conclusion reached under part one of this opinion, to-wit, the county collector is not authorized to collect delinquent real estate taxes due cities of the fourth class, it necessarily follows that he would be unable to retain any commission for such collections if such collections were made. It is a recognized rule of law that public officers cannot receive any compensation other than that provided by statute.

In the case of King vs. Riverland Levee District, 218 Mo. App. 490, 279 S. W. 195, the following statement is to be found at page 493 (Mo. App.):

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. State ex rel. Evans vs. Gordon, 245 Mo. 12, 1. c. 27, 149 S.W. 468; Sanderson vs. Pike County, 195 Mo. 598, 93 S.W. 942; State ex rel. Troll vs. Brown, 146 Mo. 401, 47 S. W. 504. Furthermore our Supreme

Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking vs. McCracken, 60 Mo. App. l. c. 565, to the effect that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same. State ex rel. Evans vs. Gordon, supra."

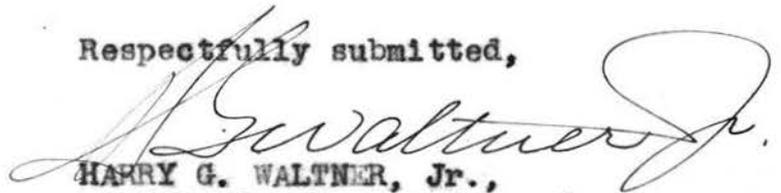
No authority in the law can be found for paying the County Collector for performing these duties, therefore he may not retain any commissions.

This statement embodies the established law of this state on this subject. In view of this rule, to hold that the county collector could receive any commission for making such collections would be to entirely ignore the established law on the subject.

CONCLUSION.

In view of the foregoing it is the opinion of this office that the County Collector is without authority to proceed with the collection of delinquent real estate taxes due cities of the fourth class; that he is wholly without authority to make any sales of property to enforce the collection of delinquent real estate taxes due cities of the fourth class and that the county collector is entitled to no commission whatsoever for the collection of any delinquent real estate taxes due cities of the fourth class in the event he should make such collections.

Respectfully submitted,


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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

HGW:MM
Enclosure.