

TAXATION:--County liable under Section 9952b, Laws of Missouri 1935, p. 403, for the expenses of printing delinquent lists of lands and lots even though they fail to sell at the collector's sale in November.

February 10, 1938

Hon. Paul N. Chitwood
Prosecuting Attorney
Reynolds County
Centerville, Missouri



Dear Mr. Chitwood:

This Department wishes to acknowledge your request for an opinion under date of February 1, 1938, wherein you state as follows:

"In 1933 the Missouri Legislature passed a law relating to the sale of delinquent tax land, commonly called the Jones-Munger Act.

Section 9952b, page 430, Mo. Laws of 1933, relating to the advertisement of such lands for taxes provides in part as follows:

'*****The county collector shall, on or before the day of sale, insert at the foot of such list on his record a copy of such notice and certify on said record immediately following such notice the name of the newspaper of the county in which such notice was printed and published and the dates of the insertions of such notice in such newspaper. The expense of such printing shall be paid by the purchaser or purchasers of the lands and/or lots sold and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed the legal rate for the entire notice, as such legal rate is fixed by Sec. 13773, which cost of printing at the rate specified shall be taxed as part of the costs of the sale of

any land or lot contained in such list and disposed of at such sale, and the total cost of printing such notice shall be prorated against all such lands or lots so sold or redeemed prior to any such sale."

According to my interpretation of this law, the printer publishing such notices only received pay of \$1.00 per lot or tract of land sold, and received nothing in event there was no sale, the county not being liable for any such costs.

In 1935, the legislature passed a law relating to the sale of delinquent property, Acts 1935, 402-3, in which they repealed, or rather amended above mentioned Sec. 9952b of 1933, by striking out the words of this act beginning 'The expense of such printing shall be paid by the purchaser' etc., and inserting in lieu thereof the following words: '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* * *'

I understand that the purchaser was liable to pay the printing cost of \$1.00, under the first law before the 1935 amendment, the county not being liable for any costs of same, and as laid down by the Supreme Court of Missouri, in State vs. Bader, 78 S.W. (2d) 835, decided December 22nd, 1934.

Now the question arises, whether the legislature intended to so amend this act as to create a liability for costs of printing such notices, of tax land, which failed to sell at a collector's sale. I believe not, but am not certain as to what the law is in the matter.

I shall appreciate your opinion in this matter, particularly as to whether Reynolds County would be liable for the costs of printing the notices of delinquent lands offered for sale for taxes, by our collector last November."

As you have quoted the pertinent provisions of the Jones-Munger Law relative to the expense of printing delinquent lists of lands and lots as it was enacted in 1933 and as it was amended in 1935, we shall not repeat these provisions.

In an opinion rendered by this Department under date of January 30, 1936, to Hon. Henry M. Phillips, Prosecuting Attorney Stoddard County, a copy of which we are enclosing, the following statement appears with reference to the above two sections under consideration:

"With reference to your particular inquiry, it is advisable for us to consider this law as it existed before the amendment adopted in 1935. By referring to the original section 9952b, page 430, Laws of Missouri 1933, we find that under the provisions of that law the newspaper publishing the notice 'shall be paid by the purchaser or purchasers of the lands and/or lots sold'. Therefore, under the law as existed before the 1935 amendment, the printer was required to rely for his pay upon the land being sold and his printing costs being collected from the purchaser as a part of the costs of the sale. No provision was made in that law for the payment of this expense by the county. In view of the provisions of the law as first enacted, this office held in an opinion rendered shortly after the Jones-Munger Act became effective, that the County Court was not permitted or authorized to pay out of the general revenue fund the expense of printing, but that the printer had to rely solely upon receiving his compensation if and when the costs were paid. Under this old procedure it was the duty of the County Treasurer and Ex-officio Collector, to collect these costs and to pay them to the parties to whom they were due, and thus the newspaper publisher would receive his portion of the costs at the time they were paid. However, it

is clear that the Legislature intended to change this system and to make the County responsible to the newspaper for this cost of publication."

As pointed out in the above section, under the 1933 Law "the printer was required to rely for his pay upon the land being sold and his printing costs being collected from the purchaser as a part of the costs of the sale", the reason being "no provision was made in that law for the payment of this expense by the county." This is no longer true for "it is clear that the legislature intended to change this system and to make the county responsible to the newspaper for this cost of publication".

In the case of State vs. Bader, 78 S. W. (2) 835, which you cite in your letter, complaint was made that Section 9952b, Laws of Missouri 1933, page 430, supra, imposed "an obligation upon the collector to proceed to advertise real estate at a certain time and provided no fund for the compensation with respect to that subject matter". The Court said:

"It is said that the collector might be subjected to suit on his official bond for his failure to make publication of the notice provided, when such duty is impossible of performance because the newspapers might decline to accept the advertising under the terms imposed by the statute. In that connection respondents say: 'No doubt each party has a right to contract for himself with respect to such matters, and although it was within the power of the Legislature to regulate, it is certainly not within its power to impose a contractual obligation upon a party willy-nilly.* * *It overlooks the fact that newspapers are privately owned and privately operated, and are not subject to public control. They are not even quasi public corporations.'

It would seem that these are matters going more to what might be called the workability of the act rather than its constitutionality. Because newspaper might refuse to publish the advertisement on the terms and conditions prescribed by the statute, would not render the act unconstitutional and we, therefore, rule the point against respondents."

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From the foregoing we are of the opinion that the Legislature in 1935 intended by the amendment of Section 9952b to create a liability for the expense of printing delinquent lists of lands and lots upon the county even though they failed to sell at the collector's sale last November.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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Enclosure.