

TAXATION: County collector, by mandamus, can be compelled to accept a warrant for taxes for the same year.

October 3, 1938

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



Dear Sir:

This is to acknowledge receipt of your letter of September 29, 1938, requesting an opinion from this department, which is as follows:

"Section 9911 R. S. Missouri, entitled 'What shall be received for Taxes', after enumerating gold and silver coin of the U. S., warrants on state auditor for state taxes, jury certificates for county taxes, bonds, etc., goes further and states * * * 'Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant * * * *"

"Now the question arises in Reynolds County, whether the Collector of Revenue can legally be made accept for county taxes, any warrant from the holder thereof, for his taxes due for the year for which the warrant was issued, by said county.

"Also, what is the remedy if the Collector refuses to so receive such warrant or warrants in payment of county taxes? Is mandamus the proper remedy in such instance. I take it that 'holder' of a warrant, as used in this section does not mean the person to whom the

warrant was originally issued, but includes every person legally coming into possession of same.

"Your opinion is earnestly requested in this matter, since there are many outstanding warrants against Reynolds County, and while the accepting them for taxes would of course decrease the actual cash revenue of the county each year, it would also help to reduce such outstanding warrants to a great extent, and in view of the facts I see no legal reason why the Collector should not be required to accept same in payment of county taxes."

Section 9911, R. S. Mo. 1929, in part reads as follows:

" * * * Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant; but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, or there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county or city for that year."

It will be noticed that this part of Section 9911, R. S. Mo. 1929, provides that the warrant shall be received in payment. In other words, this section is mandatory and requires the county collector to perform only a ministerial act and in no way does the section allow him to use his discretion in accepting the county warrant.

Section 12171, R. S. Mo. 1929, reads as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such

warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

Section 12172, R. S. Mo. 1929, reads as follows:

"All warrants drawn on the treasurer of any county shall be assignable, and every assignment of any such warrant shall be in the following form:

For value received, I assign the
within warrant to A B, this _____ day of
_____, 19__.

(Signed) C D.

No blank indorsement shall transfer any right to a warrant, nor shall it authorize any holder to fill up the same."

According to Section 12172, supra, any person who has been given a warrant drawn on the treasurer of any county may assign the warrant providing he follows the form as set out in this section. This section also specifically prohibits the blank indorsement of the warrant. This form of assignment, if legally made, defines who shall be considered the legal holder as set out in Section 9911, supra. The legal holder, therefore, who is the owner of a warrant properly assigned, may use the warrant in the payment of taxes for the year in which the warrant is payable.

You will note that Section 9911, supra, was not repealed directly or by implication. Under the county budget law, Laws of Missouri 1933, page 351, Section 22, it is provided as follows:

"All laws or parts of laws and expressly sections 9874, 9985 and 9986 in so far as they conflict are hereby repealed."

Reynolds County, Missouri, is a county of less than fifty thousand inhabitants and should be governed by the first eight sections, inclusive, of the budget law.

In Section 8, Laws of Missouri, 1933, page 346, the following appears in parenthesis:

"This shall not apply to warrants lawfully issued for accounts due for prior year, lawfully payable out of funds for prior years on hand."

By this sentence the act should be interpreted that the intention of the Legislature was that warrants are to occupy the same position after the enactment of the county budget law as formerly.

Inasmuch as the county collector is only performing a ministerial act under a mandatory section in receiving the warrants for the payment of taxes under Section 9911, supra, the proper method for enforcing the section would be mandamus.

In the case of *Bakersfield News v. Ozark County*, 92 S. W. (2d) 603, 1. c. 605, the court said:

"If a public officer fails to perform mandatory ministerial duties, he may be compelled to do so by mandamus. If he 'be guilty of any willful or fraudulent violation or neglect of any official duty' (Mo. St. Ann. sec. 11202, p. 6143), he may be removed from office by the method provided in sections 11202-11209, R. S. 1929 (Mo. St. Ann. secs. 11202-11209, pp. 6143-6146). He would be subject to criminal prosecution under sections 3945-3950 and 10187, R. S. 1929 (Mo. St. Ann. secs. 3945-3950, 10187, pp. 2761-2763, 3695). Citizens also have recourse against public officials by suits for damages. 22 R. C. L. 478, secs. 151 and 161; 46 C. J. 1042, secs. 326-329."

CONCLUSION

In view of the above authorities, it is the opinion of this department that the county collector should accept for county taxes any warrant from the holder thereof for his taxes due for the year for which the warrant was issued by said county.

It is further the opinion of this department that the holder of any warrant legally assigned according to law may take advantage of Section 9911, supra, and use the same for the payment of his taxes.

It is further the opinion of this department that mandamus is the proper method to compel the county collector to accept lawful warrants that have lawfully been presented to him for the payment of taxes.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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