

TAXATION:  
COUNTY COLLECTOR:  
ADVERTISING DELINQUENT LANDS:  
COUNTY BUDGET ACT:

Tax collector in letting contracts for publication of delinquent lands should follow the provisions of Section 19 of the County Budget Act, page 350, Laws of Missouri, 1933.

May 16, 1938

5/18



Mr. Edwin O. Harper,  
Comptroller--St. Louis County,  
Clayton, Missouri.

Dear Sir:

This is in reply to yours of May 11, requesting an official opinion from this department based on the following statement:

"Will you kindly render an opinion in the following matter:

It being the duty of the Collector of Revenue of St. Louis County to advertise delinquent tax lists under the provisions of Section 9952 B, must he advertise for bids covering the printing of such delinquent lists as provided for by Section 19 of the County Budget Law, because of the fact that the cost exceeds \$500.00 (actually \$8000.00) and is payable out of the General Fund? The County of St. Louis has no annual printing contract."

Your inquiry involves the research of a number of statutes and laws of Missouri, among which are the following: Section 9952b, page 403, Laws of Missouri, 1935, provides in part as follows:

"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 con-

secutive 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."

Section 10, page 346, Laws of Missouri, 1933, which is a part of County Budget Act provides in part as follows:

"The annual budget of any such county shall present a complete financial plan for the ensuing budget year. It shall set forth all proposed expenditures for the administration, operation and maintenance of all offices, departments, commissions, courts and institutions; the actual or estimated operating deficits or surpluses from prior years; all interest and debt redemption charges during the year and expenditures for capital projects. In addition, the budget shall set forth in detail the anticipated income and other means of financing the proposed expenditures.

All receipts of the county for operation and maintenance shall be credited to the general fund, and all expenditures for such purposes shall be charged to such fund; provided, that receipts from the special tax levy for roads and bridges shall be kept in a special fund and expenditures for roads and bridges may

be charged to such fund. All receipts from the sale of bonds for any purpose shall be credited to the bond fund created for the purpose, and all expenditures for such purpose shall be charged to such fund."\* \* \* \* \*

Section 11, page 347, Laws of Missouri, 1933, provides in part as follows:

"On or before October 1 of each year, each department, office, institution, commission, or court of the county receiving its revenues in whole or in part from the county shall prepare and submit to the budget officer estimates of its requirements for expenditures and its estimated revenues for the next budget year compared with the corresponding figures for the last completed fiscal year and estimated figures for the current fiscal year."\* \* \* \* \*

Section 18, page 350, Laws of 1933, provides in part as follows:

"Except as in this section otherwise specified, all offices, departments, courts, institutions, commissions, or other agency spending moneys of the county, shall perform the duties and observe the restrictions set forth in the preceding sections relating to budget procedure and appropriations."\* \* \* \* \*

Section 19, page 350, Laws of Missouri, 1933, provides as follows:

"All contracts shall be executed in the name of the county by the head of the department or officer concerned,

except contracts for the purchase of supplies, materials, equipment, or services other than personal made by the officer in charge of purchasing in any county having such officer.

No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating: provided that in case of any contract for public works or buildings to be paid for from bond funds or from taxes levied for the purpose it shall be sufficient for the accounting officer to certify that such bonds or taxes have been authorized by vote of the people and that there is a sufficient unencumbered amount of such bonds yet to be sold or of such taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury. All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least 500 copies per issue, if there be such, except that such advertising shall not be required in case of contracts or purchases involving an

expenditure of less than \$500.00, in which case notice shall be posted on the bulletin board in the court house."\* \* \* \* \*

On the question of what is meant by "county budget" the court, in the case of Graves v. Purcell, 85 S.W. (2d) 543, l.c. 548, said:

"\* \* \* \* Coming now to a consideration of the County Budget Law here in question, it must be observed that the title to the law contains language of very comprehensive import followed by other language of narrower meaning. The title, of course, must be considered as a whole, but in order to develop the nature and merits of the various contentions made, we will first discuss the more comprehensive language used and will later consider the effect which must be given to the language of narrower meaning. The initial words of the title are, 'An Act to provide for a County budget.' We must take judicial notice of the fact that the word 'budget' has a well-recognized general meaning. As applied to governments or governmental units, a 'budget' is a plan or method by means of which the expenditures and revenues are so controlled for a definite period, by some budgetary authority, as to effect a balance between income and expenditures." \* \* \* \* \*

The collector by virtue of the provisions of said Section 9952b, supra, may take the position that because of the fact that the lawmakers had directed to advertise

the delinquent lands, that in performing this duty he is not bound by the provisions of the County Budget Law which requires that the contract for such publication shall be let as provided by said Section 19 of the Budget Act.

Said Section 9952b, supra, provides that the expenses for the publication of the delinquent lands shall be paid out of the county treasury. This money would have to be drawn from the general revenue fund of the county which is required to be budgeted under the County Budget Law. In the case of Layne-Western Co. v. Buchanan County, Missouri, 85 Fed. 343, l.c. 347, Thomas, Judge of the United States Circuit Court of Appeals in discussing the County Budget Law as it applies to the Planning Commission, said:

"\* \* \* The statute in the instant case, however, provides that 'all contracts and purchases' shall be let after competitive bidding. It would be hard to imagine a more inclusive statute. The fact that the Commission Act provides that the commission may make all 'necessary contracts' in no way militates against the requirement of competitive bidding where the contract is in its nature competitive."

The same reasoning would apply to the county collector that applies to the Planning Commission, that is, because the legislature directed the collector to advertise the delinquent lands in no way militates against the requirement of competitive bidding where the contract in its nature is competitive. In the said Buchanan County case cited before, 85 Fed. (2d) 343, l.c. 347, the court further said:

"It is clear in this case that it was the intent of the Legislature of Missouri in enacting the County Budget Law and including therein the requirement that 'all contracts' should be let upon competitive bidding to declare a public policy. That such a policy is

wise is evidenced by the universality of such statutes found in the laws of Congress and of all the state Legislatures. At any rate, it is for the Legislatures and not the courts to pass upon their wisdom.

As the section that requires competitive bidding also requires adequate appropriation and funds to meet the contract obligation and that the contract bear the certification of the accounting officer so stating, what has previously been said as to the application of the first requirement, viz., competitive bidding, applies equally to the other requirement."\*\*\*\*\*

By said Section 19 of the County Budget Act, the contract for the printing should be let by the collector in the name of the county, and if the consideration for the contract is in excess of five hundred dollars (\$500.00), it should be advertised for letting in a newspaper with a circulation of at least five hundred copies per issue if there be such.

Section 9952b, Laws of Missouri, 1935, page 403, became effective two years after the County Budget Act, and if the terms of the Tax Act are in conflict with the County Budget Act which was passed in 1933, then under statutory construction, the 1935 Tax Act would be repealed by any portion of the Budget Act which might be in conflict with it and the provisions of the County Budget Act would have to yield to the provisions of the Tax Act of 1935. In the Layne-Western Company v. Buchanan County, Missouri, case, supra, the court also said:

"Finally, the appellant contends that the Commission Act is a special act, and therefore must take preference over the Budget Act, which is general. If there were any repugnancy between the two acts, the contention might have

merit. The Commission Act, however, nowhere says that competitive bidding may be dispensed with in contracts made by the commission. The rule is applicable, therefore, that where statutes are in pari materia they are to be construed as one system and governed by one spirit and policy."  
 \* \* \* \* \*

The Tax Act of 1935, under which the collector is to advertise delinquent lands, does not provide that competitive bids shall be taken for the contract for the printing of the lists of delinquent lands. We think the same rule, however, applies to the county collector that applies to the County Planning Commission as stated in the Buchanan County case, supra.

CONCLUSION

This office is, therefore, of the opinion that the county collector, when contracting for the advertising of the lists of delinquent lands for sale for taxes, must advertise for bids covering the printing of such delinquent lists if the cost of printing such lists exceeds the sum of five hundred dollars (\$500.00), and that in the letting of a contract for such printing, he must follow the provisions of Section 19 of the County Budget Act, Laws of Missouri, 1933, pages 340 to 351.

Respectfully submitted

TYRE W. BURTON  
 Assistant Attorney General

APPROVED:

J. E. TAYLOR  
 (Acting) Attorney General

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