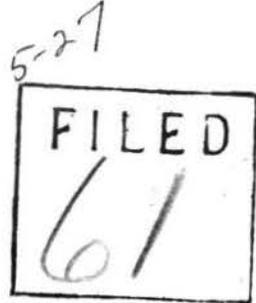


TAXATION: Failure of Board of Aldermen and City Collector to follow statute pertaining to accounting between board and collector does not affect validity of city tax.

May 26, 1938



Mr. L.E. Merrill
Attorney at Law
Brunswick, Missouri

Dear Sir:

This will acknowledge receipt of your letter of May 14, 1938, on behalf of the Board of Aldermen of Brunswick in which you request an opinion on the following:

"If a collector of a city of the fourth class, fails to make a delinquent tax list annually, as required by Statute, but does make one upon his retirement from office covering a period of several years, will the fact that he failed to make a list annually make the back taxes un-collectible?"

The delinquent tax lists you refer to are those lists set out in Section 6996, R.S. Missouri, 1929, and termed as the "land and lot delinquent list" and the "personal delinquent list". The duties of the city collector and the board of aldermen in connection with these lists are set out in Section 6996, supra, as follows:

"It shall be the duty of the board of aldermen to require the collector, annually, on the first meeting of the board of aldermen in April of each year, or as soon thereafter as may be, to make out, under oath, lists of delinquent taxes remaining due and uncollected for each year, to be known as the 'land and lot delinquent list' and the 'personal delinquent list'. It shall be the duty of the board of aldermen, at the meeting at which said delinquent list shall be returned, or as soon as may be

thereafter, to carefully examine the same; and if it shall appear that all property and taxes contained in said lists are properly returned as delinquent, the board of aldermen shall approve the same and cause a record thereof to be entered on the journal, and cause the amount thereof to be credited to the account of the city collector. The board of aldermen shall cause the land and lot delinquent list and the personal delinquent list to be returned to the city collector, who shall be charged therewith, and who shall proceed to collect the same, in the same manner and under the same regulations as are or may be provided by law for the collection of delinquent lists of real and personal taxes for state and county purposes."

Section 6995, R.S. Missouri, 1929, provides the manner in which the city collector shall enforce the payment of the delinquent taxes mentioned in Section 6996, supra. This section reads as follows:

"Upon the first day of January of each year all unpaid city taxes shall become delinquent, and the taxes upon real property are hereby made a lien thereon. The enforcement of all taxes authorized by this article shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes, including the seizure and sale of goods and chattels, both before and after said taxes shall become delinquent: Provided, that all suits for the collection of city taxes shall be brought in the name of the state, at the relation and to the use of the city collector."

We are assuming that these taxes were properly assessed (Section 6994, R.S. Missouri, 1929); that a proper levy was made thereon (Section 6998, R.S. Missouri, 1929); and that these taxes are now delinquent (Section 6995, R.S. Missouri, 1929).

The question for determination is whether or not the annual return by the city collector of these delinquent lists at the first meeting of the board of aldermen in April; the examination of the lists by the board; the approval and entry of said lists in the journal; the crediting of the amount of taxes represented by these delinquent lists to the account of the collector; the return of said lists by the board to the collector for collection, are conditions precedent to invoking the procedure provided by law for enforcing payment of taxes.

In 61 C.J., page 1057, Section 1389, in speaking on this subject, it is said:

"* * * no defense can be founded on mere irregularities, errors, defects, or omissions of statutory duty, either in the assessment or in the proceedings which followed it, up to the commencement of the suit, which do not affect the substantial liability of defendant to pay the tax, * * *."

This rule of law has been held to be applicable in Missouri. State ex rel. v. Bank of Neosho, 120 Mo. 161; State ex rel. v. Cummings, 151 Mo. 49, 59; State ex rel. v. Stamm, 165 Mo. 73, 83.

In the Stamm case, supra, at l.c. 83, it is said:

"* * * Requirements that do not affect the rights or interests of the taxpayers, but made simply for the purpose of securing order, system and convenience in the dispatch of public business are directory in their character - a literal compliance with which is not essential to the validity of the law."

In State ex rel. v. Cunningham, 153 Mo., l.c. 651, it is held that if it is shown a suit for taxes is not based

on a valid assessment, the suit will be defeated. Thus, a valid assessment is a condition precedent. That a levy be made pursuant to a valid assessment is, of course, a condition precedent, because without a levy, the rate of taxation could not be ascertained. That the tax be delinquent is much in the same class as the levy. No demand for said taxes could be enforced unless the tax was past due and unpaid.

The things which the board and collector omitted to do here are "for the purpose of securing order, system, and convenience in the dispatch of public business", but this omission does not affect the substantial liability of the taxpayer. The provisions of Section 6996, supra, which were not complied with, relate only to an accounting between the board and collector, and in no way concern the taxpayer.

The conditions precedent to enforcing payment of these taxes are a valid assessment, a proper levy and that the taxes are past due and unpaid, which we have assumed are present here.

The fact that the city collector and board have complied with Section 6996, supra, at this late date is of no concern except that it renders a proper accounting between the board of aldermen and the collector for the delinquent taxes due and unpaid for each of these years, which taxes now may be credited to the account of the collector.

CONCLUSION

Therefore, it is the opinion of this department that the failure of the board of aldermen and the city collector to comply with the provisions of Section 6996, R.S. Missouri, 1929, does not affect the validity of the city taxes, and said taxes may be collected now in a proper proceeding except, of course, those that may be barred under the provisions of Section 9961, Laws of 1935, page 405.

Respectfully submitted,

TYRE W. BURTON
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APPROVED By:

J.E. TAYLOR
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