

TAXATION:
SPECIAL ROAD DISTRICTS:
COLLECTION OF DELINQUENT
TAXES:

The County Collector is the proper party to sell lands for delinquent taxes due special road districts.

September 9, 1938 ^{9/10}

Mr. J. K. Robbins
Collector of Revenue
New Madrid County
New Madrid, Missouri



Dear Sir:

This is in reply to yours of recent date requesting an official opinion from this department based upon the following letter:

"The Conran-Gideon Road District of New Madrid County, is in the hands of Mr. R. F. Baynes as Trustee. The 1933 tax assessment is largely delinquent and will of course "Outlaw" Jan. 1st. next.

"The collector's opinion is Mr. Baynes is the proper party to force collection. Mr. Baynes' position is, the collector should proceed under the Jones-Munger Law, as other road tax is collected.

"The bondholders being somewhat irate, the collector of course wishes to escape responsibility and begs an opinion from your office as to his proper procedure."

From our research on this question, we find that the Conran-Gideon Special Road District of New Madrid County was organized under the provisions of Chapter 98, Article 13, R. S. Mo. 1919, which is now entered in R. S. Mo. 1929, as Chapter 42, Article 16. Section 8182 of said chapter provides in part as follows:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working, repairing and dragging roads in the district, general taxes on property taxable in the district, and shall also have power and authority and be its duty to levy special taxes for the purpose of paying the interest on bonds when it falls due and to create a sinking fund sufficient to pay the principal of such bonds at maturity; and, whenever such commissioners shall, at any time between the first day of January and the first day of March of any year, file with the clerk of the county court a written statement that they have levied such tax, and stating the amount of the levy for each hundred dollars assessed valuation, the county clerk, in making out the tax books for such year shall charge all property taxable in such district with such tax, and such tax shall be collected as county taxes are collected.
* * *"

By this section provision is made for the financing of such road districts and the payment of the bonds and interest, if any, when same fall due. This section further provides that the tax levied for the payment of such expenses and bonds and interest shall be collected as county taxes are collected.

It appears from your request that the road district has disincorporated and that a trustee for it has been appointed. The duties of the trustee of such district are set out in Section 8198, R. S. Mo. 1929, which are as follows:

"The trustee shall have power to prosecute and defend to final judgment all suits instituted by or against the road district, collect all moneys due the same, liquidate all lawful demands against the same, and for that purpose shall sell any property belonging to such road district or so much thereof as may be necessary, and generally to do all acts requisite to

bring to a speedy close all the affairs of the road district, and for that purpose, under the order and direction of the county court, to exercise all the powers given by law to said road district."

While this section directs the trustee to collect all moneys due the district, yet we do not think this applies to the collection of taxes, current or delinquent, for special road districts, because special statutes have been enacted relating to the collection of taxes and the tax collector in these statutes is designated as the person who shall perform that duty.

When the taxes of the county or of a special road district become delinquent, they are to be entered into a back tax book, which is to be turned over to the county collector, and his duties are then set out in Section 9949, Laws of Missouri, 1933, page 427, which are as follows:

"The collectors of the respective counties and the collectors of such cities, respectively, shall proceed to collect the taxes contained in such 'back tax book' or recorded list of the delinquent land and lots in the collector's office as herein required, and any person interested in or the owner of any tract of land or lot contained in said 'back tax book' or in the recorded list of delinquent lands and lots in the collector's office may redeem such tract of land or town lot, or any part thereof, from the state's or such city's lien thereon, by paying to the proper collector the amount of the original taxes, as charged against such tract of land or town lot described in said 'back tax book' or recorded list of delinquent lands and lots in the collector's office, together with interest on the same from the day upon which said tax first became delinquent at the rate specified in section 9952."

The procedure for the sale of delinquent property for taxes is provided by the Act known as the Jones-Munger Act, Laws of Missouri, 1933, page 425, et seq. This Act designates the county collector as the person who shall sell lands for delinquent taxes.

As to this particular road district, we find that in the case of State ex rel. J. Porter Henry, et al. v. State Auditor, R. F. Baynes, Trustee for Conran-Gideon Special Road District, et al. (not yet reported), the court in directing a peremptory writ to the respondents for the purpose of enforcing the assessment, levy and collection of taxes to pay the outstanding bonds and interest due from said district, said:

"And we do command you, respondents County Court of New Madrid County, and Sullivan Thompson, Elon Proffer and O. R. Rhodes, as Judges of said Court, to require the respondent County Clerk, and R. L. Jones as such County Clerk, to make a supplemental tax book or a supplemental column in the regular tax books for the year 1938 and extend therein on all taxable property in said Road District the amount of said installment for 1938 and in like manner in each of the subsequent years 1939 to 1945 inclusive to require the County Clerk to make such supplemental tax book or supplemental column in the regular tax book and extend therein the aforesaid levies as hereinabove made for each of said years, and we do further command you, respondent County Clerk and R. L. Jones as such County Clerk, to make up such supplemental tax book or supplemental column on the regular tax book and to charge thereon all property taxable in said Road District each year commencing with the year 1938 as hereinabove set forth with the amount of such additional tax prescribed for such year, and to deliver the said book to the respondent Collector of the Revenue for New Madrid County for collection, and we do further command you, respondent Collector of the Revenue of New Madrid County, and J. K. Robbins as such Collector, to collect said tax each year as county taxes are

collected, and turn over the same less your commission to the respondent Trustee and R. F. Baynes as such Trustee; and we do command you, Trustee, and R. F. Baynes as Trustee when you shall have received the moneys so turned over by the Collector to pay the County Clerk the statutory fee and apply the remainder to the payment of the bonds and interest owing to the relators and to other bondholders, past due and unpaid, pro rata."

From the direction of the court in this case, we are convinced that the county collector is the proper party to enforce the payment of the delinquent taxes for the special road district which has been disorganized. After such taxes are collected by sale of delinquent lands or otherwise, then it is the duty of the county collector to turn such taxes over to the trustee of the district. The trustee has no authority to sell the lands for delinquent taxes due the district.

CONCLUSION

From the foregoing, it is the opinion of this department that the county collector is the proper and necessary party to enforce the collection of delinquent taxes due a special road district which has been disorganized, and if it is necessary to sell lands for such delinquent taxes, the county collector is the proper party to sell such lands.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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