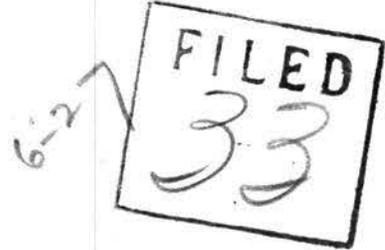


TAXATION:
COLLECTION OF TAXES:

Collector or county court may pay only
the amount authorized by statute to an
attorney for collecting delinquent per-
sonal taxes.

June 27, 1939



Mr. M. Stanley Ginn
Prosecuting Attorney
Lawrence County
Aurora, Missouri

Dear Mr. Ginn:

This is in reply to yours of recent date wherein you request an opinion on the question of whether or not the county court and county collector can employ a tax attorney and pay him as his compensation a proportionate part of the taxes collected.

On this question I find that this department, by an opinion dated January 3, 1935, written by Harry G. Waltner, Assistant Attorney General, to Jones and Wesner at Sedalia, Missouri, held as follows:

"It is our further opinion that delinquent personal taxes should be collected under the provisions of Section 9940 R. S. Mo. 1929, and that into such section there should be incorporated that part of Section 9952 R. S. Mo. 1929 which reads:

"and for the purpose of collecting such tax and prosecuting suits for taxes under this article, the collector shall have power, with the approval of the county court * * * * * to employ such attorneys as he may deem necessary, who shall receive as fees such sum, not to exceed etc; * * * * *"

We are enclosing a copy of this opinion for your use.

So it will be seen by the holdings in that opinion

that the county court and county collector are bound by the provisions of Section 9952, R. S. Missouri 1929, in the employment of attorneys to collect delinquent personal taxes.

In my research on this question, I also find that in *State ex rel., v. Smith*, 13 Mo. App. 421 at 423, the court of appeals, in construing the foregoing provisions of the statute, which is in the same form now as it was at that time with the exception that it has been amended so that the attorney may receive a three dollar fee where suit is brought by summons, or a five dollar fee where it is brought by publication, made this statement:

"It is thus perceived that the attorneys of the collector are not entitled to any fees in proceedings under this statute except such as may accrue as commissions upon 'taxes actually collected and paid into the treasury.' It is also perceived that the law in direct terms prohibits them from receiving any fee or compensation for services except such as may accrue by way of commissions upon taxes actually collected and paid into the public revenue. * * * *"

This still seems to be the law in this state. As you know the general rule of law is that a person, in order to be entitled to receive any public moneys, must be able to put his finger on the statute which authorizes payment of same. No doubt your suggestion that it would be to the best interest of the county to employ some attorney to collect these taxes on a percentage basis nor do we doubt that the county and state would realize much more money from such a procedure, however, we are bound by the foregoing rule and will have to so rule on this question.

Mr. M. Stanley Ginn

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June 27, 1939

CONCLUSION.

From the foregoing it is the opinion of this department that the county collector and county court may only enter into a contract with an attorney to collect delinquent taxes when the terms of the contract are within the provisions of Sections 9940 and 9952, supra.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:DA