

TAXATION AND REVENUE: Taxes unlawfully collected should be
COUNTY BUDGET LAW: refunded out of Class 5 under the
REFUNDING OF TAXES: County Budget Act.

December 19, 1939

12-20



Honorable Vincent S. Moody
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Sir:

This is in reply to yours of recent date where-
in you submit the following statement of facts and
questions:

"In 1937, a certain farm was advertised and sold for delinquent taxes. Prior to this, notice had been given to the county collector by the owner of said farm that the farm was in bankruptcy under the Frazier-Lempke Act; and therefore, the collector had no right to sell this farm. The purchaser of said farm paid the money and it was distributed to the various taxing bodies according to law. In 1939, the purchaser of said land applied to our present county collector for a deed to said premises. The collector refused to give the purchaser a deed basing his right to do so upon Section 9958 A. Laws of Missouri, 1933, at page 441. The purchaser of the land who had paid his money into the county then applied to the County Court for a refund of the purchase price plus interest. The county court is willing to refund the purchase price.

"Under the above state of facts,

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will you please render me an opinion upon the following two questions:

"1-Under the budget law, upon which fund should a warrant refunding the purchase price be drawn?

"2-If they are authorized to pay, should they pay interest on the amount refunded?"

I think an answer to your question will depend entirely upon what the statutes provide in connection with taxation and county budget law.

It seems that your collector has refused to deliver a deed to a party who purchased lands which he had offered for sale for taxes because the sale was invalid. Section 9958a, Laws of Missouri, 1933, at page 441, provides as follows:

"Whenever the county collector shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever, invalid, he shall not convey such lands; but the purchase money and the interest thereon shall be refunded out of the county treasury to the purchaser, his representatives or assigns, on the order of the county court. Such invalid sale shall suspend for the period intervening between the date of the sale and the discovery of its invalidity the running of the statute of limitations. In such cases the county collector shall make an entry opposite to such tracts or lots in the record of certificates of purchase issued or redemption record that the same was erroneously sold, and the cause of invalidity, and such entry shall be prima facie evidence

of fact therein stated. He shall notify the county clerk of such action, whose duty it shall be to make a like entry upon his sale record."

It will be noted by this section that the lawmakers intended that in cases where a party had purchased lands at sales under the Jones-Munger Act and the collector could not execute and deliver a deed on account of the sale being invalid, that the purchase money, together with interest thereon, should be refunded out of the county treasury to such purchaser.

Then the next question which confronts us is, granting that the money is to be refunded out of the county treasury, from what class would this refund be taken. In 1933 our lawmakers enacted a bill known as the County Budget Act. Under this law an attempt was made to classify all claims against the county and require that they be paid in the order of their classification. The act to which we refer is Laws of Missouri, 1933 at page 340. This act has been before the courts on a number of occasions and without an exception the courts have held that the counties are bound by the act and must follow its provisions.

On the question of the classification of expenditures, we find that by Section 2 of the Act, page 341, it is provided as follows:

"The court shall classify proposed expenditures in the following order.

"Class 1: The county court shall set aside and apportion a sufficient sum to care for insane pauper patients in state hospitals. Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes.

"Class 2: Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this act. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1.

"In estimating the amount required in class 2 the county court shall set aside and apportion in the budget a sum not less for even years than the sum actually expended in the last even numbered year and for odd years an amount not less than the amount that was actually expended during the last preceding odd numbered year.

"Class 3: The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county.

"Class 4: The county court shall next set aside the amount required to pay the salaries of all county officers where the same is by law made payable out of the ordinary revenue of the county, together with the estimated amount necessary for the conduct of the offices of such officers, including stamps, stationery, blanks and other office supplies as are authorized by law. Only supplies for current office use and of an expendible nature shall be

included in this class. Furniture, office machines and equipment of whatever kind shall be listed under class six.

"Class 5: The county court shall next set aside a fund for the contingent and emergency expense of the county, which shall in no case be more than one-fifth of the anticipated revenue. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes.

"Class 6: After having provided for the five classes of expenses heretofore specified, the county court may expend any balance for any lawful purpose. Provided however, that the county court shall not incur any expense under class six unless there is actually on hand in cash funds sufficient to pay all claims provided for in preceding classes together with any expense incurred under class six. Provided, that if there be outstanding warrants constituting legal obligations such warrants shall first be paid before any expenditure is authorized under class 6."

By a reference to the foregoing section on expenditures, we think that the refund authorized by said Section 9958a, Laws of Missouri, 1933, page 441, could only be paid out of Class 5. This claim would be in the nature of contingent or an emergency claim.

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CONCLUSION.

From the foregoing it is the opinion of this department that where a party purchases lands which the county collector has offered for sale for delinquent taxes and has paid money therefor to the collector, that where the collector is unable to deliver a valid deed, then it is the duty of the county court to order a warrant drawn on the county treasury repaying to such purchaser the amount that he has paid the collector for the lands together with interest thereon at the legal rate.

We are further of the opinion that this claim for refund and interest should be classed as a fifth class demand against the county and paid out of that class.

Respectfully submitted

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APPROVED:

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