

TAXATION:
COLLECTION OF DELINQUENT
TAXES IN CITIES UNDER A
SPECIAL CHARTER:

Cities operating under a special
charter should certify their
delinquent taxes to the county
collector unless the charter pro-
vides for such collection.

June 16, 1939



Honorable Otto P. Shanks
Prosecuting Attorney
Lewis County
Monticello, Missouri

Dear Mr. Shanks:

This is in reply to yours of recent date wherein you request an opinion from this department on whether or not under the Jones-Munger Act the County Collector of Lewis County, Missouri, should advertise and sell real estate for delinquent town taxes of the town of Canton, Missouri, which have been duly certified to him by the board of directors and trustees of that town.

You state in your request that the town of Canton is existing and operating under a special charter declared to be a public act which is found in Laws of Missouri of 1873 at page 208.

It is a general proposition of law that cities, towns and villages, being creatures of the statute, that the officers of such municipalities must look to the statute or the charter for their powers and authority. It is also a general proposition of law that statutes which relate to taxation of property and the sale of property for taxes must be strictly construed in favor of the owner of the property and unless the official follows the procedure set out in the statute the sale of such property for taxes is void. The city charter of the city of Canton provides in part as follows (Section 1, Article VI, Laws of Missouri 1873, at page 208):

"The board of trustees shall have power and authority to levy and

collect taxes upon all property, real, personal and mixed, within the limits of the town, not exceeding one-half of one per cent, for any one year upon the assessed value thereof, for general purposes; * * "

Section 15 of the charter also provides:

"The board of trustees shall have power and authority to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this act, so that such ordinances be not repugnant to nor inconsistent with the constitution of the United States or of this state."

From an examination of the charter of the city of Canton it will be noted that there is no provision made in the charter for that city to sell lands for delinquent taxes. Looking to the general statute on this question we find that Section 9970, Laws of 1933 at page 450, provides as follows:

"The collectors of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state shall, on or before the first day of May, annually, return to the county collector a list of lands and lots on which the taxes or special assessments levied by such city or incorporated town remain due and unpaid. The county collector shall receipt for the aggregate amount of such delinquent taxes, which receipt shall be held by the treasurer of the city or town, and shall stand as evidence of indebtedness upon the part of

the county collector and his bondsmen to such city or town, until settlement in full has been made by payment to said treasurer or his successor of all taxes thus receipted for, or by a return of such part as is uncollectible."

In order to arrive at the construction to be placed upon this statute we think we should refer to the history of the legislation provided in this section. This act amended Section 9970, R. S. Missouri 1929, by changing the date of the annual returns made by collectors. This law was originally enacted in 1872, Laws of 1872 at page 118 and provided as follows:

"The collectors of all cities and incorporated towns, having authority to levy and collect taxes under their respective charters, or under any law of this state, shall on or before the first day of May, annually, return to the county collector a list of lands and lots on which the taxes or special assessments levied by such city or incorporated town remain due and unpaid; * * * * *

There may be some confusion on this question caused by the provisions of Section 9948, R. S. Missouri 1929, which is as follows:

"Within thirty days after the settlement of the collector, in the odd numbered years, the several county clerks in each county in this state, and in such cities, the register, city clerk or other proper officer, shall make, in a book to be called the 'back tax book,' a correct list, in numerical order, of all tracts of

land and town lots on which back taxes shall be due in such county or city, setting forth opposite each tract of land or town lot the name of the owner, if known, and if the owner thereof be not known, then to whom the same was last assessed, the description thereof, the year or years for which such tract of land or town lot is delinquent or forfeited, and the amount of the original tax due each fund on said real estate (and the interest due on the whole of said tax at the time of making said back tax book, together with the clerk's fees then due), in appropriate columns arranged therefor, and the aggregate amount of taxes, interest and clerk's fees charged against each tract of land or town lot for all the years for which the same is delinquent or forfeited; said back tax book, when completed, shall be delivered by said clerk or other proper officer to the proper collector of the county or such city, for which he shall take duplicate receipts, one of which he shall file in his office and the other with the state auditor, and the clerk or other proper officer shall charge such collector with the aggregate amount of taxes, interest and clerk's fees contained in said 'back tax book.' In all such cities the said 'back tax book' shall be made out, in alphabetical order, in the name of the owner, if known; and if the owner be not known, then in the name of the person to whom such tract or lot was last assessed. All taxes, interest and clerk's fees hereafter contained in the 'back tax book' herein described

shall bear interest from the time of the making out of said 'back tax book' at the rate of ten per cent. per annum until paid. In computing interest under this article, a fraction of a month shall be counted as a whole month."

This confusion is caused by the reference to certain cities. The cities mentioned in this section are cities of a population of over five thousand. The history of this section shows that it comes down from an act of the General Assembly of Missouri of 1879, Laws of Missouri 1879 at page 187, Section 1, and it provides in part as follows:

"* * * That immediately after the taking effect of this act, the collector of each county, and the collector of all cities having a population of five thousand inhabitants or more, shall return to the clerk of the county court of his county, or in such cities to the register, city clerk or other proper officer, all delinquent and forfeited lists or tax bills of real estate in his hands, except taxes due prior to the year 1865, * * * * *"

We note in the footnote to Section 9948 which was inserted by the 1929 Revised Laws that the term "such cities" set out in that section refers to cities described in Section 9970. We think that this is erroneous for the reason that cities referred to in Section 9970 are cities under five thousand population.

The Supreme Court in State to use Begeman v. Robyn, 93 Mo. 395, l. c. 398, in distinguishing the Act of 1879, supra, which is the forerunner of Section 9948, R. S. Missouri 1929, and the act of 1872, supra, which is the forerunner of Section 9970 and the 1933 Act, supra, made this statement in reference to delinquent tax procedure for the town of Hermann which

was operating by virtue of a special charter issued to it by the legislature:

"The act of 1872 did then create a lien for these delinquent taxes assessed by the town of Hermann, and that lien must, according to that act, be enforced by the county collector. This duty of enforcing the lien still remained with the collector under the act of April 12, 1877. Laws, 1877, p. 385. The first section of the amendatory act of April 24, 1879 (Laws, 1879, p. 187), makes it the duty of the city collectors, in cities having a population of five thousand or more inhabitants, to return to the city register the delinquent lists; and other sections of that act provide that, in all such cities, the delinquent taxes are to be collected by the city officers, and not by the county collector. By section 9, the lien is, in express terms, declared in favor of such cities. But as to state and county taxes, and delinquent taxes of cities and towns having less than five thousand inhabitants, the collection thereof remained with the county collector, as before the passage of the act of 1879. As to towns and cities having less than five thousand inhabitants, sections 177 to 182, of the act of 1872, remained in full force. These sections are the same as sections 6827-8-9-30-31, of Revised Statutes of 1879. The amendments of these sections by the act of April, 1883 (Laws, 1883, p. 151), do not

affect the question under consideration. The town of Hermann having less than five thousand inhabitants, this suit was, therefore, properly brought in the name of the state at the relation and to the use of the county collector. The lien for the delinquent tax could not be enforced in any other way."

You state in your request that the city of Canton has a population of two thousand and is operating under a special charter. That being the case it seems that it would fall within the same class as the town of Hermann insofar as the enforcement of delinquent taxes for such town are concerned unless there are other sections of the statute which would change that provision. By a search through the statutes it will be found that cities of the second and third class have special provisions for the collection of their delinquent taxes. We particularly refer to the provisions of Sections 6781 which pertain to third class cities and 6696 which pertain to fourth class cities and it provides that:

"* * * the land and lot delinquent list (1) to be returned to the city collector * * * 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: * * * * *"

The courts of this state have held that such a provision authorized such cities or towns to collect their own delinquent taxes regardless of the general provision of the tax law, that is, Section 9970 or any other section in conflict thereto. City of Aurora ex rel. v. Lindsay, 146 Mo. 509; State ex rel. Duble, Collector of the City of Princeton v. Lewis et al., 256 Mo. 121. However, it will be noted that these were cases in which a special provision had been made for cities of that class to collect their own delinquent

tax. Absent such a provision, however, the cases seem to hold that the procedure in collecting such taxes is set out in the general section which is the 1933 act, supra.

In State ex rel. Van Brown v. Van Every, 75 Mo. 530, the delinquent taxes due the City of Hannibal were involved. In that case the suit for the taxes was brought in the name of the state of Missouri at the relation of and to the use of the collector of the city. The suit for the taxes was brought under the general law authorizing cities to certify to the county collector the delinquent list. It was insisted by the owner of the property that the general law did not apply because the charter of the city of Hannibal provided a special lien for city taxes and divested the state of any lien. In this case it was held that the suit was properly brought in the name of the state of Missouri under the general statute. The court reviewed the tax sections and at l. c. 534, said:

"Section 178 of the act of 1872, referred to in the foregoing section of the act of 1879, required the collectors of all cities and incorporated towns having authority to levy and collect taxes, on or before the 1st day of May annually to return to the county collector a list of lands and lots on which taxes levied by such city or town remained due and unpaid, and made it the duty of such collector to obtain judgment and sell the real estate. These various provisions leave no escape from the conclusion, that the city of Hannibal has no right of action in her own name, to enforce the lien for delinquent taxes levied by her. The lien given her by her charter of 1870, was taken from the city, and given to the State, by the act of 1872, and was continued

in the State by the subsequent acts.

"It must be admitted that the revenue law contains many provisions which are apparently repugnant to each other, and it is no easy task to place such a construction upon them as one may confidently rely upon. * * * * *

CONCLUSION.

Since we find no special provisions relating to the collection of delinquent taxes by the city of Canton it is the opinion of this department that the provisions of Section 9970 of the Laws of Missouri, 1933, at page 450 would prevail, and that it would be the duty of the city collector to certify to the county collector the list of lands and lots on which taxes or special assessments of such city remain due and unpaid and that it would be the duty of the county collector then to proceed to collect such taxes as is provided for under the Jones-Munger Act.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TWB:DA