

TAXATION AND REVENUE: I. Cities of special statutory charter must certify their delinquent taxes on real estate to the county collector for collection unless the charter provides a special scheme of collection by a city collector. II. General taxes on real estate become delinquent on January 1st, annually, and county collector shall proceed to force the lien of the state thereon and may charge the fees incident thereto.

January 4, 1940.

Mr. Roger Hibbard
City Attorney
Hannibal, Missouri



Dear Mr. Hibbard:

We desire to acknowledge your request for an opinion from this department on December 28, 1939, which is as follows:

"For some time there has been confusion between the offices of the City Collector of the City of Hannibal and the County Collector of Marion County, Missouri, regarding the proper time for making up the back tax books and charging the delinquent tax payers the fees incident to making entries in these books. In the past the City Collector of the City of Hannibal, has made up his back tax book and started charging these fees on January 1 of each year. The County Collector's office has made their book up on March 1 and started charging the fees as to that date. The delinquent tax payers have therefor been paying these fees to one of the offices and not to the other, thereby causing considerable confusion.

"The City Collector has asked me for an opinion as to when he is required by law to make up the back tax book and charge the fees incident thereto. Section 9948 of the Revised Statutes of 1929, and Section 9945, as amended in 1933, and found in the Session Laws of 1933 at page 426, are the only sections which I find are applicable in either of these cases, and neither is very clear, particularly as to the duty of the City Collector.

January 4, 1940.

"In as much as this question involves the interpretation of state statutes, and likewise affects a number of the tax payers, I am requesting your office for an opinion as to when the City Collector of the City of Hannibal is required by law to make up his back tax book and charge the delinquent tax payer the fees incident to making the entries in the back tax book.

"I will appreciate very much the opinion of your office, or any information regarding this matter."

I.

This department rendered an opinion to Honorable George W. Petty, Collector of Clay County on October 8, 1934, providing that cities with special charter provisions for the collection of delinquent taxes prevail over general statutes, a copy of which is enclosed herein.

An opinion to Honorable Otto P. Shanks, Prosecuting Attorney of Monticello, Missouri on June 16, 1939, holding that cities operating under a special charter should certify their delinquent taxes on real estate to the county collector for collection, unless the charter provides for such collection, a copy of which is enclosed herein.

II.

Section 9936, Article IX, Chapter 59, R. S. Mo. 1929, is as follows:

"All real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent, and the said county collector shall proceed to enforce the lien of the state thereon, as required by this chapter; and any failure to properly return the delinquent list, as required by this chapter, shall in no way affect the validity of the assessment and levy of taxes, nor of the judgment and sale by which the collection of the same may be enforced, nor in any manner to affect the lien of the state on such delinquent real estate for the taxes unpaid thereon."

Section 9942 R. S. Mo. 1929 is, in part, as follows:

"At the term of the county court at which the several delinquent lists are required by law to be returned and certified, the

said court shall examine and compare the list of lands and town lots on which the taxes remain due and unpaid; * * * and cause the list so corrected to be certified and filed in the office of the clerk of the county court; * * * "

Section 9943 R. S. Mo. 1929 is, in part, as follows:

"The clerk of the county court shall file the said list in his office, and within ten days thereafter make the same into a 'back tax book,' as contemplated by section 9948, under the seal of the court, and deliver the same to the collector of the revenue of his county, * * * "

Section 9944 R. S. Mo. 1929 is, in part, as follows:

"All back taxes, of whatever kind, whether state, county or school, or of any city or incorporated town, appearing due upon delinquent real estate, shall be extended in the 'back tax book' made under this article, * * * Provided, that in all cases where the auditor or other proper officer is required by provision of charter of any city of five thousand or more inhabitants to make the list for city delinquent taxes in this section provided, and to deliver the same to the collector or other proper officer of such city, such collector or other proper officer shall proceed to collect such delinquent list in such 'back tax book,' so made out and delivered to him by the auditor or other proper officer of such city, in the manner and under authority prescribed by this law, and the chapter to which this is amendatory."

Section 9945, Laws of Missouri 1933, at page 426, is as follows:

"Hereafter as often as any delinquent tax list or tax bills shall be received by the county court or other proper tribunal or officer from collectors at their annual settlements, the same, except as to the list of delinquent lands, shall be made by the county clerk, and as to the delinquent lands the same shall be entered of record in the county collector's office by the collector, if in counties, and if in cities containing a population of five thousand or more inhabitants, by the proper officer, into a 'back tax book,' containing the same facts and in the same form as provided in sections 9948 and 9952, as to lands, city and town lots now delinquent; except that in counties where an alphabetical arrangement of the 'land list' in the assessor's book shall have been required by an order of the county court, such collector's record of the delinquent land list 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 the tract or lot was last assessed; the collector shall proceed to collect the taxes due thereon as provided in this chapter in reference to taxes now delinquent; all taxes hereafter becoming delinquent shall bear interest until paid as provided by section 9952, and shall also be subject to the same fees, commissions and charges as in this chapter provided for taxes now delinquent, except that for making and recording the delinquent land list, the collector who makes such book and the clerk or other officer who makes the 'back tax book' shall receive only ten cents per tract, city or town lot, and

the clerk for comparing and authenticating such record of the delinquent list of land and lots as made by the collector shall receive five cents per tract, city or town lot."

Section 9948 R. S. Mo. 1929 is, in part, 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,' * * * "

Section 9963c, Laws of Missouri 1933, page 448 is as follows:

"In all counties that have adopted or may hereafter adopt township organization, wherever the word 'collector' is used in this act, as to such counties such designation shall be construed to mean 'treasurer and ex-officio collector,' or in Section 9962 may be township collector. Where applicable it shall also refer to the collector, or other proper officer, collecting taxes in any city or town. Where applicable the word 'county' as used in this act shall be construed 'City' and the words 'county clerk' shall be construed 'city clerk, or other proper officer.'" "

Under the provisions of Section 9936, Article IX, Chapter 59, R. S. Mo. 1929, all real estate upon which taxes remain unpaid on the first day of January, annually, shall be deemed delinquent and under the provisions of Section 9944, seq. , all back taxes of whatever kind

appearing due upon delinquent real estate, shall be extended in the back tax book. This section includes cities unless they are exempt therefrom, by reason of special charter schemes providing for delinquent and back taxes and the collection thereof.

Section 9945, Laws of Missouri 1933, is a reenaction of a similar section in said Article IX, Chapter 59 R. S. Mo. 1929 and provides, among other things, for the recording of delinquent tax bills and for fees for certain services.

Section 9948, supra, provides for the making of a back tax book and, among other things, for fees for certain services.

In Section 9963c, supra, the legislature recognizing that the above Article IX, Chapter 59 and amendments thereto, comprehended certain cities as well as counties, provided that where applicable the "county" as used in this act shall be construed "city" and the words "county clerk" shall be construed "city clerk" or other proper officer.

CONCLUSION

Therefore, it is the conclusion of this department that real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent and that the delinquent list, after being corrected and certified under the provisions of Section 9942, supra, shall be filed with the clerk of the county court who shall, within ten days, make the same into a back tax book under the provisions of Section 9944, supra, but that the procedure of cities of 5,000 or more inhabitants - except cities under special charters with a complete scheme for delinquent and back taxes and the collection thereof - as to making the back tax book, is controlled by the proviso in said Section 9944, supra. That the fees incident thereto cannot be charged except as provided by

Mr. Roger Hibbard

- 7 -

January 4, 1940.

statute and subsequent to the date of delinquency provided
in Section 9936, supra.

Respectfully submitted,

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APPROVED:

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SVM:LB
Encls.