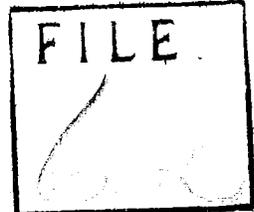


TAXATION AND REVENUE: Appointment of an attorney for the collection of delinquent personal taxes.

✓ / ✓ / ✓
September 30, 1941

Honorable Stephen J. Millett
Prosecuting Attorney
Caldwell County
Kingston, Missouri



Dear Mr. Millett:

Your request for an opinion dated September 26, 1941, has been assigned to me. In said request you state as follows:

"The collection of personal taxes due the State and County has fallen down in this County (Caldwell County) badly since the enactment of the Jones-Munger Act. Our collections on real estate are good.

"The County Court desire to employ an attorney, Mr. O. C. Tee of Hamilton, Missouri, to collect the delinquent personal taxes for and on behalf of the Ex-Officio County Collector. The enclosed opinion of Mr. Tee states that there is no legal manner in which he can be paid or collect for such services since Section 9952, R. S. Mo. 1929 has been repealed.

"I believe this situation should be called to the attention of the Governor of Missouri and the State Legislature for correction.

"The question that we have before the County Court is how can the County Court and the Collector legally employ and pay an attorney to enforce the collection of delinquent personal taxes?

"The Prosecuting Attorney has enough to do as it is without attempting to do this additional work. In this County the Prosecuting Attorney is

Hon. Stephen J. Millett.

- 2 -

September 30, 1941.

not allowed any money to employ an assistant or clerical help by the County Court.

"Do you have any solution to this problem?"

Section 11112, Chapter 59, Article IX, R. S. Mo. 1939, relating to the appointment of an attorney for the collection of personal delinquent taxes is in part as follows:

" * * * Said actions shall be prosecuted by attorneys employed as provided in article 9 of this chapter of the general statutes, and the fees and compensation allowed in said article shall apply to the above actions: Provided, however, that in no case shall the state, county, city or collector be liable for any costs nor shall any be taxed against them or any of them. * * * "

The article referred to therein embodies Section 9952, R. S. Mo. 1929, which provides for the appointment of attorneys for the collection of delinquent taxes on real estate and their fees. No other section in said article relates to such subject. Said Section 9952, supra, is in part as follows:

"* * * 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, or in such cities, the mayor thereof, to employ such attorneys as he may deem necessary, who shall receive as fees such sum, not to exceed ten per cent of the amount of taxes actually collected and paid into the treasury, and an additional sum not to exceed \$3.00 for each suit instituted for the collection of such taxes, where publication is not necessary, and not to exceed \$5.00 for each suit where publication is necessary, as may be agreed upon in writing, and approved by the county court, or in such cities, the

Hon. Stephen J. Millett. - 3 - September 30, 1941.

mayor thereof, before such services are rendered, which sum shall be taxed as costs in the suit and collected as other costs, and no such attorney shall receive any fee or compensation for such services except as in this section provided; * * * "

Senate Bill No. 94, Laws of Missouri, 1933, at page 425, commonly known as the Jones-Munger Act, which provides for a summary scheme for the collection of taxes on real estate, repeals the above Section 9952.

The question is: Would a section providing for the appointment of such attorney, but in a manner provided in a referred section, be nugatory when such referred section were repealed?

The court, in the case of Crohn v. Telephone Company, 131 Mo. App. 313, 320, 321, in discussing such a method of adoption by reference in statutes, said:

" * * * In Endlich on Interpretation of Statutes, section 85, it is said: 'An act adopting by reference the whole or a portion of another statute, means the law as existing at the time of adoption and does not adopt any subsequent addition thereto or modification thereof.' This rule is generally recognized. (Sutherland on Statutory Construction, section 257; 26 Am. and Eng. Ency. of Law (2 Ed.); 714; Postal Tel. Co. v. Railroad, 89 Fed. 190; Jones v. Dexter, 8 Fla. 276; Culver v. People, 161 Ill. 96; 43 N. E. 812; Darnstaeter v. Maloney, 45 Mich. 621, 8 N. W. R. 574; Matter of Main Street, 98 N. Y. 454; Commonwealth v. Kendall, 144 Mass. 357; Gaston v. Lamkin, 115 Mo. 20.) Further it is said by the same author (section 492): 'Where the provisions of a statute are incorporated by reference in another (where one statute refers to another for the powers given or rules of procedure prescribed by the

former, the statute or provision referred to or incorporated becomes a part of the referring or incorporating statute; and if the earlier statute is afterwards repealed, the provisions so incorporated, the powers given, or rules of procedure prescribed by the incorporated statute, obviously continue in force, so far as they form part of the second enactment.' To the same effect in *Caston v. Lamkin*, 115 Mo. 20, where the Supreme Court of this State said: "The general rule governing in such cases seems to be that where one statute refers to another for rules of procedure prescribed by the former, the former statute, if specifically referred to becomes a part of the referring statute, and the rules of procedure prescribed by the earlier statute so far as they form a part of the second enactment, continue in force, although the earlier statute be afterwards modified or repealed."

"Under these rules, that part of section 2864 relating to parties and procedure became by adoption an integral part of section 2866 to the same extent as though it had been written into the latter statute and neither a subsequent amendment nor repeal of section 2864 could affect the referring section."

Senate Bill No. 94, supra, was passed, without an emergency clause, on March 25, 1933, and approved April 7, 1933. House Bill No. 44, Laws of Missouri, 1933, was passed, with an emergency clause, April 1, 1933, and approved April 8, 1933.

Senate Bill No. 94, supra, purported to repeal the suit scheme and provide a scheme for delinquent taxes on real estate in a summary manner. House Bill No. 44, supra, in one section, (9952), purported to provide for the collection of such taxes by suit and for the appointment of attorneys and the fixing of their fees for the

Hon. Stephen J. Millett. - 5 - September 30, 1941.

prosecution of such suits in counties of 80,000 to 90,000 inhabitants.

Said House Bill No. 44 was held to be "nugatory, and as if never passed" by the Supreme Court en banc in the case of State ex rel. Karbe v. Bader, 336, Mo. 259, 269, in the following language:

"There was nothing in House Bill No. 44 in the nature of new legislation. Its sole object was to amend Section 9952 (the effective law at the time House Bill No. 44 was introduced) insofar as it related to back tax attorneys in counties of a designated population. It seems obvious, and we hold that the nominal reenactment of Section 9952 by House Bill No. 44 was not intended to, nor did it have the effect of impliedly repealing or otherwise disturbing the Jones-Munger Act. We think that by attaching an emergency clause to House Bill No. 44 the Legislature intended that it should be operative only until such time as Senate Bill No. 94 took effect, the latter measure not having received executive approval at the time the former was passed. But we must hold bad, as the parties tacitly concede, the emergency clause just mentioned because invalid on its face and, therefore, wholly ineffectual to make House Bill No. 44 operative upon being signed by the Governor, and so upon the happening of the latter event House Bill No. 44 became nugatory, and as if never passed. This ruling is in harmony with controlling canons of construction, and, as we believe, causes the true legislative intent to speak."

CONCLUSION.

Therefore, it is my opinion that House Bill No. 44, supra, being held by the court to be nugatory; and, Senate Bill No. 94, supra, repealing Section 9952, supra, after Section 9940 became effective, said Section 9952 became a part of Section 9940 to the same extent as

Hon. Stephen J. Millett. - 6 - September 30, 1941.

though it had been written into such statute, and that neither a subsequent amendment nor repeal of said Section 9952 could affect the referring section. That by reason of said premises, an attorney for the collection of said personal taxes should be appointed and his fees fixed under the provisions of said Section 9952 as it existed at the time of the effective date of said Section 9940.

Respectfully submitted,

APPROVED:

S. V. NEEDLING
Assistant Attorney General

VANE C. TIERLO
(Acting) Attorney General

SVM/mc