

COUNTY CLERK: Shall make the back tax book.

July 3, 1943

7/1 ✓



Mr. John R. Johnson
Assistant Prosecuting Attorney
Ellington, Missouri

Dear Mr. Johnson:

This will acknowledge receipt of your letter of recent date in which you request an opinion based on the following:

"I am having some trouble trying to convince Bob Parks the Collector and Lloyd Hill, the County Clerk which should make up the Back tax book, etc.

"It seems for the last few years that the Collector has been making his own back tax book, now Section 11120 would lead you to believe that such duty still remains with the County Clerk, but the Clerk maintains that Section 11124 put this duty over on the Collector, but I failed to construe it that way, however it does not matter to me who makes up the back tax book, and if your office will be so kind as to render an opinion on that matter it will be appreciated."

Before proceeding our examination of the statutes cited in your letter we call your attention to two additional statutes, namely, Section 11110 and 11114 R. S. Mo., 1939, which, in our opinion, should be read in connection with Sections 11120 and 11124 R. S. Mo., 1939. Looking now to the first section cited, Section 11120 R. S. Mo., 1939, we find the following:

"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 section requires the county clerk in the odd numbered years to make a book called the "back tax book" within thirty (30) days after the collector's settlement. When this book is completed it is to be delivered to the collector, one copy being forwarded to the State Auditor. This is a mandatory duty imposed on the clerk of the county court. The statute is clear, it is unambiguous and needs no interpretation.

Turning now to Section 11124 R. S. Mo., 1939, we find the full text is as follows:

"Between the first of January and the first of July in the year 1934 and annually thereafter, and immediately upon the effective date of this act, the county collector shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, including therein the delinquent taxes of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state returned delinquent to the county col-

lector, separately stated, describing such lands or lots as the same are described in the tax books and said delinquent returns, as corrected under sections 11110 and 11114, and charging them with the amount of delinquent tax and naming the years delinquent, separately stated, and in addition thereto a penalty of ten per centum on such tax delinquent for the preceding year and an additional annual ten per centum on taxes for each year prior to the preceding year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same by himself, or deputy, officially: Provided, however, if taxes are paid on land or lots delinquent for the preceding year at any time prior to sale thereof as in this law provided, the per centum of penalty added shall not exceed one per centum per month or fractional part thereof or ten per centum annually. It shall be the duty of the county clerk and county collector to compare the collector's record of such list of delinquent lands and lots as corrected with the corrected 'delinquent land list' made pursuant to sections 11110 and 11114, and the county clerk shall certify in the 'delinquent land list' on file in his office that same has been properly recorded in the collector's office and shall attach a certificate at the end of the record of such list of delinquent lands and lots in the collector's office that such record contains a true copy of the 'delinquent land list' on file in his office. And where the words 'back tax book' are now used in

laws pertaining to the collection of taxes on delinquent lands, real estate and/or lots, the record of the list of delinquent lands and lots in the collector's office under the provisions of this law shall be held to be (where applicable and except as to city or town 'back tax book') such 'back tax book', and the recording of same by the collector and certification by the county clerk as herein provided, shall be construed as a making of such 'back tax book' of delinquent real estate, lands and lots. Said collector shall be charged with the taxes, penalty and interest shown on such record of the list of delinquent lands and lots."

This section requires that annually the county collector make out a record which includes the remaining delinquent taxes, that he certify this record, sign same and this record is to be used as a basis for a comparison record of the "back tax book." It is the further duty of the county clerk and the collector to compare these two lists with the corrected delinquent land list made pursuant to Sections 11110 and 11114. We do not quote these two latter sections because of their great length and further because they have no useful purpose other than to supplement the statutes about which you inquire.

CONCLUSION

From our examination of the statutes you cite, together with others brought to your attention, we are of

Mr. John R. Johnson

-6-

July 3, 1943

the opinion that the "back tax book" shall be made by the county clerk.

Respectfully submitted,

L. I. MORRIS
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

LIM:FS