

COUNTY CLERK: Not the duty of county clerk to make up Delinquent Personal Tax Books; County Clerk not required to make two complete sets of current personal and current real estate Tax Books.

January 10, 1944



Honorable F. Harold Fenix
Collector of Revenue
Jasper County
Carthage, Missouri

Dear Mr. Fenix:

Under date of December 30th, 1943, you wrote to this office requesting an opinion, as follows:

"I would appreciate having opinions from your office on the following two questions:

"1. Is it the duty of the County Clerk to make up Delinquent Personal Tax Books?

"2. Is the County Clerk required to make two complete sets of Current Personal and Current Real Estate Tax Books?"

Your questions will be treated in the order in which you have stated them. Both of your questions are matters for which we must consult the statutes in order to arrive at the answer.

Section 11110, R. S. Mo. 1939, provides for the making of "personal delinquent list," and "land delinquent list." This section is as follows:

"whenever any collector shall be unable to collect any taxes specified on the tax book, having diligently endeavored and used all lawful means to collect the same, he shall make lists thereof, one to be called the 'personal delinquent list,' in which shall be stated the names of all persons owing

taxes on personal property, where taxes cannot be collected, alphabetically arranged, with the amount due from each, and the other to be called the 'land delinquent list,' in which shall be stated the taxes on lands and town lots where taxes have not been collected, with a full description of said lands and lots, and the amount of taxes due thereon, set opposite each tract of land or town lot; and a like list of all delinquent clerks and other officers hereinbefore required to pay to the collectors the amount of revenue by them respectively received, to be called the 'delinquent list of officers.'

Section 11114, R. S. Mo. 1939, requires the county court to correct the delinquent land list and certify it and file it in the office of the county clerk.

Section 11115, R. S. Mo. 1939, requires the county clerk to make a back tax book, which section is 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 11120, under the seal of the court, and deliver the same to the collector of the revenue of his county, whose duty it shall be to proceed to collect the same, and to that end shall have the power, and it is hereby made his duty, to levy upon, seize and distrain personal property, and sell the same for such taxes, in the manner provided in this article. In the city of St. Louis the uncollected bills shall be returned with said list: Provided, that the city comptroller, or other proper officer, shall return said list within thirty days to the city collector. And if it appear that any county court or county clerk of this state has, within five years next before the taking effect of this section, failed in the discharge of any one of the duties prescribed by sections 11114 and 11120 of this article, or shall so fail

at any time hereafter, to such an extent that the collection of said taxes cannot be enforced by law, it shall be the duty of the said county court and clerk, or their successors in office, immediately after such omission or defect is discovered, to proceed at once to correct the same and supply the omission or defect, and return such corrected 'back tax book' to the collector, whose duty it shall be to collect the same, as hereinbefore set forth."

Section 11120, R. S. Mo. 1939, prescribes the manner of making the back tax book, and 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."

You will observe that in none of these statutes is there any requirement that the county clerk make a personal back tax book.

Inasmuch as these statutes, which are the only ones relating to the making of back tax books, do not require the county clerk to make such book there is no authority for the county clerk to make a personal back tax book.

In regard to your second question, the statute relating to the making of the back tax book is Section 11048, R. S. Mo. 1939, which is as follows:

"As soon as the Assessor's book shall be corrected and adjusted, the Clerk of the County Court, except in St. Louis City, shall, within ninety days thereafter, extend the taxes therein in proper columns prepared for such extensions, which book, with the taxes so extended therein, shall be authenticated by the seal of the Court as the Tax Book for the use of the Collector; and when the Assessor's book is in two or more volumes, such extension shall be made in all such volumes, and each vol-

ume shall be authenticated by the Clerk with the seal of the Court. And upon a failure to make out such extension of taxes in the Assessor's book or books, as the case may be, and deliver same to the Collector in the time specified, the County Court shall deduct twenty per centum from the amount of fees which may be due the Clerk for making such extension, and such Assessor's book, with the taxes so extended therein, shall be called the 'Tax Book.'

Nothing is said in this section about making two copies, or making any copies of the tax book. Prior to 1933 the county clerk was directed to make a copy of the tax book to be used by the collector, by Section 9876, R. S. Mo. 1929. Section 9876, R. S. Mo. 1929, was amended by the General Assembly in 1933.

Section 9876, R. S. Mo. 1929, was as follows:

"As soon as the assessor's book shall be corrected and adjusted, the clerk of the county court, except in St. Louis city, shall, within ninety days thereafter, make a fair copy thereof, with the taxes extended therein, authenticated by the seal of the court, for the use of the collector; and where the assessor's book is in two or more volumes, such copy thereof shall be divided into volumes in the same manner and designated by the same numbers, and each volume shall be authenticated by the clerk with the seal of the court. And upon a failure to make out and deliver to the collector such copy in the time specified, the county court shall deduct twenty per centum from the amount of fees which may be due the clerk for making such copy, and such copy of the assessor's book shall be called the 'tax book.'

By comparing Section 11048, R. S. Mo. 1939, with Section 9876, R. S. Mo. 1929 you will readily see that the provision for making a copy of the tax book was removed from the section.

CONCLUSION

The answer to both of your questions is, no. There is no authority for the county clerk to make a delinquent personal tax book, or to make two complete sets of current personal and current real estate tax books.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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