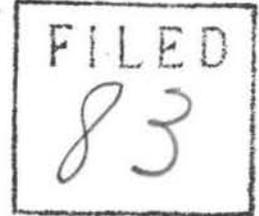


TAXATION: County collector in counties of 200,000 to 700,000 population not entitled to fees allowed by Section 11117, but county clerk is entitled to fees allowed him by said section.

November 30, 1944

12/14



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: Mr. B. E. Ragland, Chief Clerk

Dear Sir:

We have your letter of recent date in which you submit to this office the following question:

In connection with the collection of taxes in counties of 200,000 to 700,000 population, are the fees provided by Section 11117 to be charged in addition to the fees provided by Section 11395? (Reference to statutes in this opinion is to Revised Statutes of Missouri, 1939.)

By Section 11378 the making of tax books, extension and collection of all taxes upon real and personal property in such counties is governed by the provisions of Article 22 of Chapter 74 of the Statutes.

Section 11395 of said Article 22 reads as follows:

"Fees shall be allowed for services rendered under the provisions of this article as follows: To the collector two per cent on all sums collected; to the collector in cities named in Section 11202 two per cent on all sums collected--such per cent to be taxed as costs and collected from the party redeeming. To the county collector for making the 'Back tax book', twenty-five cents per tract, to be taxed as costs and collected from the party redeeming such tract. To the circuit clerk, justice of the peace,

sheriff and printer, such fees as are allowed by law for like services in civil cases, which shall be taxed as costs in the case: * * * * "

By the foregoing section, all services required to be performed under said Article 22 are to be paid for by the fees set out in said Section 11395.

Section 11396 of said Article 22 reads as follows:

"The general law as now existing in all matters relating to taxation and the collection of delinquent and back taxes not specifically provided for in this article shall continue to be the law for counties coming within the operation of this article, and all laws or parts of laws in conflict with this law insofar as they conflict with this law shall be and hereby are repealed."

By this latter section (11396), it is made clear that if there are any matters relating to taxation and the collection of delinquent and back taxes which are not specifically provided for in Article 22, such matters are to be governed and regulated by the general law on such matters.

Section 11395 only purports to provide compensation for services required to be performed by Article 22, Chapter 74. If, therefore, Section 11117 covers matters not specifically provided for by said Article 22, then said section controls as to such matters.

Section 11117 provides, in part, as follows:

"Hereafter as often as any delinquent tax list or 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 11120 and 11124, as to lands, city and town lots now delinquent; * * * * all taxes hereafter becoming delinquent shall bear interest until paid as provided by section 11124, 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."

It will be seen that said section requires the county clerk to do certain things which are not required of said official by Article 22 of Chapter 74. Said section provides specific compensation for the duties performed by the clerk under said Section 11117. As pointed out above, Section 11117 is a part of the general law, and since it provides for certain duties not mentioned in Article 22 of Chapter 74, it is, under the provisions of Section 11396, still in force and effect as to such matters. Since the services required of the county clerk by Section 11117 are not required by Article 22 of Chapter 74, it follows that the clerk is entitled to such compensation as said Section 11117 provides for these particular services.

There is nothing in Article 22 of Chapter 74 which specifically requires the county collector to record in his office the delinquent land list. By the reasoning above, it would seem to follow that the fees provided by Section 11395 would not apply to such services. However, Section 11395 specifically provides fees to the county collector, and among them are, "To the county collector for making the 'Back tax book', twenty-five cents per tract, * * *." It seems clear, therefore, that by Section 11395, which was passed after Section 11117, the Legislature intended to provide a new schedule for the fees of the county collector for making the "back tax book." In interpreting any statute, it is, of course, the proper rule to try to ascertain the intention of the Legislature, and in the face of the plain language of Section 11395 with respect to the compensation for making the "back tax book", it can hardly be doubted that the Legislature meant to make a new provision for

payment for that service. The provisions of Section 11117 and Section 11395 with respect to fees for making the "back tax book" cannot both stand since they are in conflict. Section 11395, being the later statute, would prevail over Section 11117 with respect to that provision. To apply the strict reasoning applied in the first part of this opinion with respect to county clerks would result in a holding that Section 11117 controlled as to the fees of the county collector in making the "back tax book", and would make the provisions of Section 11395 with respect to said fees meaningless. We do not believe this would be justified in the face of the plain language of Section 11395.

CONCLUSION

It is, therefore, the opinion of this office that in counties of 200,000 to 700,000 population the county clerk is entitled to the fees provided by Section 11117 for services required of him therein, but that the county collector is not entitled to the fees provided by Section 11117 for making the "back tax book", the fees of the collector being controlled by Section 11395.

Respectfully submitted

HARRY H. KAY
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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