

OFFICERS: Prosecuting Attorneys are required to prosecute suits for the collection of delinquent personal taxes without additional compensation.

September 14, 1949



Honorable Elmer Peal
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this Department, reading as follows:

"Our County Collector has taken up with me the matter of filing suit to enforce collection of personal delinquent taxes. Section 11112 sets out the procedure, but says nothing about attorney's fees, and does not say that the Prosecuting Attorney is to file said suits for the Collector.

"I would greatly appreciate an opinion from your office in this matter, I am, "

Your inquiry resolves itself into two distinct questions:

- (1) Is the Prosecuting Attorney required to institute proceedings for the collection of delinquent personal taxes, and
- (2) If so, is such officer entitled to additional compensation for his duties so performed?

We shall discuss the questions in the order mentioned. This opinion will be limited to counties of the third class, of which Pemiscot County forms a part, in accordance with the classification act found Laws of Missouri, 1945, page 1801.

Section 11112, Mo. R.S.A., referred to in your letter of inquiry reads in part as follows:

"Tangible personal property taxes assessed on and after January 1, 1946 and all personal

taxes delinquent at that date, shall constitute a debt, as of the date on which such taxes were levied for which a personal judgment may be recovered against the party assessed with such taxes before any court of this State having jurisdiction. All actions commenced under this law shall be prosecuted in the name of the State of Missouri, at the relation and to the use of the collector and against the person or persons named in the tax bill, and in one petition and in one count thereof may be included the said taxes for all such years as may be delinquent and unpaid, and said taxes shall be set forth in a tax bill or bills of said personal back taxes duly authenticated by the certificate of the collector and filed with the petition; and said tax bill or tax bills so certified shall be prima facie evidence that the amount claimed in said suit is just and correct, and all notices and process in suits under this law shall be sued and served in the same manner as in civil actions, and the general laws of this state as to practice and proceedings and appeals and writs of error in civil cases shall apply, as far as applicable, 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. * * *

This statute provides the method for the collection of delinquent taxes on tangible personal property and is the method used to enforce collection of such taxes for the benefit of the state, county, etc., for whose behalf such taxes have been levied. You will further note that under the first sentence of the statute such taxes constitute a "debt".

It is true that no specific reference is made in the statute to the duties of the Prosecuting Attorney with respect to the institution and prosecution of the suits provided for therein. However, your attention is directed to Section 12942, R. S. Missouri, 1939, relating to the general duties of Prosecuting Attorneys, which reads in part as follows:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions

in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county; * * *

(Underscoring ours.)

It is apparent that this statute imposes the duty upon Prosecuting Attorneys to collect all "debts" due the county of which he is an officer. Viewing this provision with reference to the fact that Section 11112, Mo. R.S.A., establishes delinquent tangible personal property taxes as a "debt" of the taxpayer, it necessarily follows that the duty of instituting and prosecuting suits for the collection of such delinquent taxes is imposed upon the Prosecuting Attorney.

It is also true that no specific provision is incorporated in the statute authorizing the payment of any fee or compensation to the Prosecuting Attorney for performing such duties. However, in the case of *Williams v. Chariton County*, 85 Mo. 645, the rule was declared by the Supreme Court of Missouri to be as follows:

"Under the authority of the case of *Shed v. Ry. Co.*, 67 Mo. 687, no fees are allowed an officer except where expressly given and allowed by law.
* * *

Following this early case, there have been numerous others decided by the Supreme Court, holding in substance that an officer who claims compensation for the performance of an official act must point to a statute specifically authorizing the payment to him of such compensation. This rule was again declared in *Nodaway County v. Kidder*, 129 S.W. (2d) 857, wherein the Supreme Court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. *State ex rel. Evans*

v. Gordon, 245 Mo. 12, 28, 149 S.W. 638;
King v. Riverland Levee Dist., 218 Mo. App.
490, 493, 279 S.W. 195, 196; State ex rel.
Wedeking v. McCracken, 60 Mo. App. 650, 656.

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

With this rule in mind and giving due regard to the provisions of Sections 12939.1, Mo. R.S.A., providing for the compensation of Prosecuting Attorneys in counties of the third class, we reach the conclusion that no additional compensation may be allowed a Prosecuting Attorney for his duties in connection with the institution and prosecution of suits for the recovery of delinquent taxes on tangible personal property.

CONCLUSION.

In the premises we are of the opinion that Prosecuting Attorneys in counties of the third class are required to institute and prosecute suits for the recovery of delinquent taxes on tangible personal property as provided in Section 11112, Mo. R.S.A.

We are further of the opinion that such officers are not entitled to additional compensation for the discharge of their official duties performed in connection with such suits.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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