

TOWNS AND VILLAGES:
TAXATION:

Delinquent taxes of any town or village shall be collected by the county collector in the same manner as delinquent state and county taxes are collected.

May 16, 1950



Honorable W.C. Frank
Prosecuting Attorney
Adair County
Kirksville, Missouri

*See Op. 99 dated Dec 27, 1950
to Woolsey*

Dear Sir:

I.

This will acknowledge receipt of your recent letter in which you requested an official opinion of this department, which letter reads as follows:

"The County Collector of Adair County has asked me to ascertain from your office whether or not you have an official opinion construing his duties under Section 7260 R.S. Missouri 1939, regarding what procedure he would have to take in order to collect taxes of towns or villages referred to in this Section after they have been certified to him and asked that if you had not already given an opinion construing this Section that I request that you prepare an official opinion setting forth what his duties are under this section and he specifically would like to know if he can sell real-estate for non-payment of taxes the same as he does for non-payment of county and state taxes or whether or not he would have to first bring a suit and obtain judgment and then proceed to sell the real-estate."

II.

Section 7260, R.S. Mo. 1939, which has been re-enacted by House Revision Bill No. 2030, and numbered Section 80.48 for the Revised Statutes of 1949, provides the method for the assessment and collection of revenues by town and villages and is as follows:

"All assessments on real and personal property within the limits of such town, which may be certified and transmitted to the board of trustees, from time to time as provided in the preceding section, shall be taken and considered as the lawful and proper assessment on which to levy and collect the municipal taxes of the town, and the payment of all taxes authorized by this article shall be enforced by the collector in the same manner and under the same rules and regulations as may be provided by law for collecting and enforcing the payment of state and county taxes, and for that purpose it shall be the duty of the board of trustees to require the collector, annually to make out and return, under oath, a list of delinquent taxes remaining due and uncollected on the first day of January of each year, to be known as the delinquent list. It shall be the duty of the board of trustees, at the next meeting after such delinquent list shall be returned, or as soon thereafter as convenient, carefully to examine the same, and if it shall appear that all property and taxes contained in said list are properly returned as delinquent, they shall approve such list and cause an order of approval to be entered on the journal, and the amount of taxes in such list to be credited on the account of the collector; and shall also cause said delinquent list or a certified copy thereof, with the bills therefor, to be placed in the hands of the county collector, who shall give a receipt therefor and proceed to collect the taxes due thereon, in like manner and with the same effect as delinquent taxes for state and county purposes are collected. The said collector shall pay over the taxes collected to the city treasurer, at the times and in the manner provided by law for the payment of county taxes to the county treasurer, and shall make the same statements and settlements for such taxes with the board of trustees, and at the same time as may be provided by law for statements and settlements with the county court for county taxes, and all taxes shall bear the same rate of interest, and the same penalties shall attach to the nonpayment thereof when due, as may be provided by law in cases of county taxes. A certified copy of any tax bill included in the delinquent list, approved by the board

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of trustees, shall in all cases be prima facie evidence that the amount therein specified is legally due by the party against whom such tax bill is made out, and that all provisions of the law and ordinances have been duly complied with, and that the same is a lien on the property therein described."

This section has not been construed by our appellate courts since the enactment of the Jones-Munger Tax Law which was enacted in 1933. This section very definitely states that the towns and villages shall place the collection of the delinquent taxes in the hands of the county collector, and he is clearly directed to collect such taxes as he collects delinquent taxes due the state and county.

Section 11202, R. S. Mo. 1939, which has been re-enacted by Senate Revision Bill No. 1024, and given Section number 140.34, R. S. Mo. 1949, is as follows:

"The collectors of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state shall, on or before the first Monday in March, annually return to the county collector a list of lands and lots on which the taxes or special assessments levied by such city or incorporated town remain due and unpaid. The county collector shall receipt for the aggregate amount of such delinquent taxes, which receipt shall be held by the treasurer of the city or town, and shall stand as evidence of indebtedness upon the part of the county collector and his bondsmen to such city or town, until settlement in full has been made by payment to said treasurer or his successor of all taxes thus receipted for, or by a return of such part as is uncollectible."

This section is a general section that applies to all cities and towns that do not have authority to enforce the collection of their delinquent taxes. This section provides that the delinquent taxes shall be turned over to the county collector before the first Monday in March. Section 7260, supra, provides the board of trustees of a town or village shall turn over said delinquent taxes to the county collector at the next meeting after the first day of January of each year, or as soon thereafter as convenient.

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Section 11202, supra, places a definite deadline for the action on the part of the board of trustees in turning over the delinquent list of taxes to the county collector.

Section 11203, R.S. Mo. 1939, which has been re-enacted by Senate Bill No. 1024 and given section number 140.343, R.S. Mo. 1949, is as follows:

"The power to collect such city or incorporated town tax or special assessments before sale is hereby given to the county collector after said delinquent list is received by him."

This very definitely gives the county collector the power to collect such delinquent taxes. Section 11204, R.S. Mo. 1939, which has been re-enacted by Senate Revision Bill No. 1024, and given Section No. 140.353, R.S. Mo. 1949, provides that such delinquent town and village taxes shall be embodied in the list of delinquent state and county taxes and Section 11205, R.S. Mo. 1939, re-enacted Laws 1945, page 1822, and re-enacted by Senate Revision Bill No. 1024 and given Section No. 140.357, R.S. Mo. 1949, provides the amount of compensation the county collector shall receive for collection of delinquent back taxes due towns and villages.

Your letter asks if the county collector may sell real estate for non-payment of delinquent taxes the same as he does for non-payment of delinquent county and state taxes. The answer to this question is in the affirmative. The provisions for the collection of delinquent and back taxes is set forth in Article IX of Chapter 74, R.S. Mo. 1939, and has been re-enacted and revised by Senate Revision Bill No. 1024 and will appear in Chapter 140, R.S. Mo. 1949. The County collector will follow the procedure set forth in this chapter for the collection of delinquent back taxes to enforce collection of the delinquent taxes of any town or village in his county. Suits for the collection of delinquent personal taxes would be filed by the county collector with the assistance of the prosecuting attorney.

The Supreme Court of Missouri in the case of State v. Nolte, 138, S.W.2d. 1016, considered the question whether or not the county collector or the city collector should collect the delinquent taxes of a city of the fourth class under the provisions of the Jones-Munger Tax Law. The court held that the city collector of a city of the fourth class has been given the power to collect delinquent taxes and that he was the proper officer to collect such taxes due a city of the fourth class.

The Supreme Court of Missouri in the case of Gilmore v. Hibbs, 152 S.W. 2d. 26, considered the same question as it applied to a

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city of the third class, and held that the city collector was the proper officer to collect the delinquent taxes due a city of the third class.

The Supreme Court of Missouri in the Nolte case stated that Section 9970, R. S. Mo. 1929, now Section 11202, R. S. Mo. 1939, applied only to the limited number of cities which still return their delinquent taxes to the county collector instead of city officials. The Legislature has not seen fit to give towns and villages the power to collect their delinquent taxes by any of their officials.

This department on August 8, 1933, rendered an official opinion to the State Tax Commission in regard to the question of who shall collect delinquent taxes due towns and villages. We held that delinquent taxes due towns and villages are to be collected by the county collector under the provisions of Senate Bill 94. Senate Bill 94 is now known as the Jones-Munger Tax Law which was cited above, and is part of said Article IX of Chapter 74, R. S. Mo. 1939.

We again rendered an opinion on this question on March 28, 1934 to Mr. C. C. Kenneth of Granger, Missouri, wherein we set forth the duties of the parties under the provisions of Section 7260, R. S. Mo. 1939, and a copy of this opinion is herewith attached.

CONCLUSION

It is the opinion of this department that under the provisions of Section 7260, R. S. Mo. 1939, the delinquent taxes of any town or village shall be returned to the county collector of the county in which they are located on or before the first Monday in March of each year. The collector shall enforce the collection of such delinquent taxes in the same manner as delinquent taxes due the state and county are collected. Any real estate that has such delinquent taxes levied against it may be sold by the county collector in accordance with the provisions of Chapter 74, R. S. Mo. 1939. He may file suit for the collection of delinquent personal taxes.

Respectfully submitted,

APPROVED:

STEPHEN J. MILLETT
Assistant Attorney General

J. E. TAYLOR
Attorney General

SJM:mw
Enc.