

COUNTY COLLECTOR) Under Senate Bill No. 1024 and House Bill No. 2010,
) 65th General Assembly, County Collector receives
) ten cents per tract for making delinquent land list
) and County Clerk receives ten cents per tract for
) making back tax book, plus five cents per tract
COUNTY CLERK) for authenticating list.

September 27, 1950



Honorable W. H. Holmes
State Auditor
Jefferson City, Missouri

Attention: Mr. L. R. Shelton

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"Please advise this Department with an official opinion on the following questions:

"What fees are county collectors entitled to for making and recording the delinquent land list of (a) current taxes and (b) the delinquent land list of back taxes, under Item 2, S.B. 1024, 65th General Assembly and Section 11182, R. S. Mo. 1939? 52.270

"What fees should county clerks charge for making the collector's delinquent land lists into a back tax book as provided in Section 140.137 of S. B. 1024?"

Section 11110, Laws of 1945, page 1847, provides: 140.030

"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 'tangible personal

Honorable W. H. Holmes

property delinquent list', in which shall be stated the names of all persons owing taxes on tangible 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 collector the amount of revenue by them respectively received, to be called the 'delinquent list of officers.'

Section 140.133, Senate Bill No. 1024, Sixty-fifth General Assembly, provides in part as follows:

"1. The county clerk shall file the delinquent lists in his office and within ten days thereafter make, under the seal of the court, the lists into a back tax book as provided in section 140.137.

"2. When completed, the clerk shall deliver the book to the collector taking duplicate receipts therefor, one of which he shall file in his office and the other he shall file with the director of revenue. The clerk shall charge the collector with the aggregate amount of taxes, interest, and clerks fees contained in the back tax book."

Section 140.143, Senate Bill No. 1024, Sixty-fifth General Assembly, provides:

"The county clerk and the county collector shall compare the collector's record of delinquent lands and lots with the corrected delinquent land list made pursuant to sections 11110 and 11114 Laws 1945, pages 1847 and 1910 respectively, and the clerk shall certify on the delinquent land list on file in his office that the list has been

Honorable W. H. Holmes

properly recorded in the collector's office and shall attach a certificate at the end of the recorded list in the collector's office that such record contains a true copy of the delinquent land list on file in his office."

(Underscoring ours.)

Section 140.15, Senate Bill No. 1024, Sixty-fifth General Assembly, provides in part as follows:

"2. For making and recording the delinquent land lists, the collector and the clerk shall receive ten cents per tract or lot and the clerk shall receive five cents per tract or lot for comparing and authenticating such list."

Section 52.25, House Bill No. 2010, Sixty-fifth General Assembly, provides:

"In all counties having a population of less than 100,000, the collector shall be allowed for services rendered in the collection of delinquent and back taxes, two per cent on all sums collected, such per cent to be taxed as cost and collected from the party redeeming; and for recording the list of delinquent land and lots, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

(Underscoring ours.)

This provision is practically identical with Section 11182, 52.25 R. S. Missouri, 1939, as amended by Laws of 1945, page 1847.

The steps for making the delinquent tax lists and back tax books, under the above provision, are as follows: The collector each year makes a list of taxes on the current books which he has been unable to collect. (Section 11110, supra.) The list is filed with the county clerk who makes the back tax book. (Section 140.133, supra.) The back tax book is delivered to

Honorable W. H. Holmes

the collector who proceeds to collect the taxes listed therein. Section 11117, R. S. Missouri, 1939, provided that the collector should enter the delinquent land list of record in his office. Senate Bill No. 1024 of the Sixty-fifth General Assembly revised this provision, and there is now no specific requirement that the collector enter such list of record in his office. The revision was made pursuant to the following recommendation of the Committee on Legislative Research (Appendix to Report No. 11, Part Two, page 426):

"140.133, 140.137, 140.143, 140.147, 140.15--
R. S. 1939 sections 11115 as amended Laws
1945 page 1897, 11117, 11120 as amended
Laws 1945 page 1910, and 11124 as amended
Laws 1945 page 1910, relate to the back
tax book.

"Section 11115 provides that the county clerk is to make a back tax book and deliver it to the collector who collects such back taxes; it further provides for the curing of omissions. Section 11117 provides that the clerk make the delinquent personal back tax book and the collector make the real estate back tax book, it further provides the fee for the clerk and collector in preparing the book. Section 11120 provides that the county clerk in the odd numbered years shall make up a back tax book and details the contents thereof. Section 11124 provides that the county clerk, annually between February 1st and July 1st, shall make up a back tax book and that the clerk and the collector shall compare them.

"The conflict and duplication among these sections are apparent from an examination of them. To resolve this situation it is suggested that these sections be repealed and five new sections enacted as follows:

"Section 140.133 to provide that the clerk make the back tax book each year

Honorable W. H. Holmes

and deliver it to the collector who proceeds to make collections from it. Section 140.137 to provide for the make up of the back tax book and for the interest rate on delinquent taxes, fees, etc. Section 140.143 to provide that the clerk and collector compare the list and for the clerk's certification. Section 140.147 to provide that the book be in alphabetical order in certain counties. Section 140.15 to provide the penalty against delinquent land and fees."

The committee thus recommended, and the amendment adopted by the Legislature pursuant to the recommendation resulted in, a change in the substantive law regarding the making of the back tax books. Section 11124, as amended by Laws of 1945, page 1910, contained the following provision:

" * * * And where the words 'back tax book' are now used in laws pertaining to the collection of taxes on delinquent lands, real estate and 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. * * *"

Under this provision the duty of making the back tax book was actually placed in the hands of the county collector. The revision contained in Senate Bill No. 1024 of the Sixty-fifth General Assembly placed the duty in the hands of the county clerk, where it had been prior to amendments made in 1933. (Laws of 1933, page 425; Section 9945, R. S. Missouri, 1929.)

However, while transferring the duty of making the back tax book to the county clerk and eliminating provisions requiring the collector to record the delinquent tax lists in his

Honorable W. H. Holmes

office, provisions relating to such recording there were retained. Section 140.143 of Senate Bill No. 1024, quoted above, makes reference to recording in the collector's office. Furthermore, section 11182, R. S. Missouri, 1939, as amended by Laws of 1945, page 1847, which provided the collector's fee for recording the delinquent list was re-enacted in substantially the same form by Section 52.25, House Bill No. 2010, supra. In view of the confusion resulting from the recommended changes by the Committee on Legislative Research, we must attempt to ascertain the manner and amount of fees which may be charged in accordance with the well-settled principles concerning fees of county officials.

"It is the well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed." (Ward v. Christian County, 341 Mo. 1115, 111 S.W. (2d) 182, 1. c. 183.)

Your first inquiry concerns the fee which the collector may receive for making and recording the delinquent land lists of current taxes. Section 104.15 of Senate Bill No. 1024, supra, provides:

"For making and recording the delinquent land lists the collector and the clerk shall receive ten cents per tract or lot. * * *"

No duty is now imposed on the collector to record the list. He is required to make it, and under this provision would be entitled to ten cents per tract or lot included on said list. Inasmuch as he is not now required to record the list the provisions of Section 52.25 of House Bill No. 2010, supra, are not applicable and the collector may not claim any fees under that section.

As for the second part of your inquiry relative to the collector's fees, we find no statute imposing upon him the duty of making or recording the delinquent land lists of back taxes. Therefore, he is entitled to no fees in this regard.

Your second inquiry concerns the fees of the county clerk. As pointed out above, the county clerk is now required to enter

Honorable W. H. Holmes

the delinquent land lists in the back tax books. Section 104.15 of Senate Bill No. 1024, supra, provides that the collector and clerk shall receive ten cents per tract or lot for making and recording the delinquent land lists. That section further provides that "the clerk shall receive five cents per tract or lot for comparing and authenticating the list."

Under this provision we feel that the clerk should receive ten cents per tract for recording the lists in the back tax book and five cents per tract for comparing and authenticating the list. Section 52.25 of House Bill No. 2010, supra, which provides the fee of twenty-five cents per tract for the collector for recording the delinquent land lists would not be available to permit the collection of such fee by the county clerk inasmuch as said provision provides that it shall be payable to the collector.

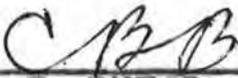
CONCLUSION

Therefore, it is the opinion of this department that under the terms of Senate Bill No. 1024 and House Bill No. 2010, Sixty-fifth General Assembly, the county collector is entitled to receive ten cents per lot or tract for making the delinquent land lists of current taxes and is not required to make a delinquent land list of back taxes, and, therefore, may receive no fees for such services. We are further of the opinion that under said bills the county clerk should charge, for making the collector's delinquent land lists into a back tax book, ten cents for each lot or tract recorded in said book, plus five cents for each lot or tract for comparing and authenticating the list.

Respectfully submitted,

APPROVED:

ROBERT R. WELBORN
Assistant Attorney General



J. E. TAYLOR
Attorney General

RRW/feh