

COUNTY COLLECTOR:

Fees allowed to county collector and county clerk for making delinquent land lists and back tax book. Accrual of fees to each office for each year of delinquency.

COUNTY CLERK:

May 17, 1951.

Mr. G. H. Bates,
Director of Revenue
State of Missouri,
Jefferson City, Missouri.

5-8-51

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Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office. Your request reads as follows:

"Noting that your department, under date of September 27, 1950, held that county collectors are not required to make delinquent land lists of back taxes, we assume that county clerks, in order to prepare the back tax books as provided for in Section 140.060 R. S. Mo. 1949, will consolidate the tax charges appearing on the current delinquent land lists supplied by the collectors, with transfers of back delinquent land tax charges for all prior years appearing on the back tax book, into a new consolidated land back tax book. 10

"Now, assuming that this will be the procedure, what amount of fees per tract or lot does Section 140.100 R. S. Mo., 1949 authorize county collectors and county clerks to charge tax payers whose taxes are delinquent, A: two years; B: three years?"

This office rendered an opinion to the Honorable W. H. Holmes under date of September 27, 1950, in which the following conclusion was reached:

"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."

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It was pointed out in that opinion, a copy of which is enclosed, the steps for making the delinquent tax list were as follows: The collector each year makes a list of taxes on the current books which he has been unable to collect. (Section 11110). The list is filed with the county clerk who makes the back tax book. (Section 140.133). The back tax book, is delivered to the collector who proceeds to collect the taxes listed therein. Section 11117, R. S. Mo. 1939, provided that the collector should enter the delinquent land list of record in his office. However, Senate Revision Bill No. 1024 of the Sixty-Fifth General Assembly changed this section, and there is now no specific requirement that the collector enter such list of record in his office. This change was recommended by the Committee on Legislative Research and was adopted by the Legislature. While the duty of making the back tax book had been delegated to the county collector since 1933, the revision contained in Senate Bill 1024 (65th General Assembly) delegated the duty to the county clerk, where it had been prior to amendments made in 1933. The history of this legislation is discussed in the opinion referred to above, a copy of which is enclosed herewith. 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 office, provisions relating to such recording there were retained and some confusion has resulted from the recommended changes by the committee on Legislative Research. No duty is now imposed on the collector to record the list. He is required to make a current delinquent list, and under this provision would be entitled to ten cents per tract or lot included on such list. Inasmuch as he is not now required to record the list the provisions of Section 52.290 RSMo 1949 reading "and for recording the list of delinquent land and lots, twenty-five cents per tract", are not applicable and the collector may not claim such a fee. We find no statute imposing upon the collector the duty of recording the delinquent land list of back taxes and, therefore, he is entitled to no fees under the section quoted above.

Section 140.010, RSMo 1949 provides in part:

"All real estate upon which taxes remain unpaid on the first day of January, annually, shall be deemed delinquent * * *."

Section 140.020, RSMo 1949, provides in part:

"The taxes due and unpaid on any real estate which has heretofore been returned delinquent, and which has not been forfeited to the state, and the taxes due and unpaid on any real estate which has been forfeited to the state for the nonpayment of such taxes, shall be deemed and held to be back taxes* * *."

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Section 140.030, RSMo 1949, provides in part:

"Whenever any collector shall be unable to collect any taxes specified on the tax book * * * he shall make lists thereof * * *, one to be called the 'tangible personal property delinquent list,' * * * and the other to be called the 'land delinquent list' * * *."

Section 140.050, RSMo 1949, provides the county clerk shall make the delinquent list into a back tax book in the following manner:

"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 140.060.

"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.

"3. The collector shall collect such back taxes and may levy upon, seize and distrain tangible personal property and may sell such property for taxes.

"4. In the city of St. Louis, the city comptroller or other proper officer, shall return the back tax book together with the uncollected tax bills within thirty days to the city collector.

"5. If any county court or clerk fails to comply with section 140.040, and this section, to the extent that the collection of taxes cannot be enforced by law, the county court or clerk, or their successors in office, shall correct such omissions at once and return the back tax book to the collector who shall collect such taxes."

Section 140.060, RSMo 1949, specifies the contents of the back tax book and directs how it shall be made up as follows:

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"1. The back tax book shall be made up as follows:

"(1) All tracts of land or city lots on which back taxes are due shall be listed in numerical order with the legal description thereof;

"(2) The name of the owner, if known, and if unknown, the name of the person to whom such land was last assessed shall be set forth opposite each tract of land or city or town lot;

"(3) In appropriate columns shall be entered the year or years for which such land is delinquent, the amount of original tax due each fund, the interest due on such tax at the time of making the back tax book, the clerk's fees then due, and the aggregate amount of taxes, interest, and clerk's fees charged against such land for all the years delinquent.

"2. In such cities the back tax book shall be made out, in alphabetical order, in the name of the owner, if known, and if not known, then in the name of the person to whom such land was last assessed.

"3. All taxes, interest and clerk's fees shall bear interest at the rate of ten per cent per annum from the time of making such book until paid. In computing such interest, a fraction of a month shall be counted as a whole month."

Section 140.070 provides that delinquent real estate taxes shall be extended in the back tax book as follows:

"All back taxes, of whatever kind, whether state, county or school, or of any city or incorporated town, appearing due upon delinquent real estates shall be extended in the back tax book made under this chapter, and in case the collector of any city or town shall have omitted or neglected to return to the county collector a list of delinquent lands and lots, as required by section 140.670, the present authorities of such city or town may cause such delinquent list or lists

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to be certified, as by said section contemplated, and such delinquent taxes shall be by the county clerk put upon the back tax book and collected by the collector under authority of this chapter; provided, that in all cases where the auditor or other proper officer is required by provision of charter of any city of five thousand or more inhabitants to make the list for city delinquent taxes in this section provided, and to deliver the same to the collector or other proper officer of such city, such collector or other proper officer shall proceed to collect such delinquent list in such back tax book, so made out and delivered to him by the auditor or other proper officer of such city, in the manner and under authority prescribed by this law, and the chapter to which this is amendatory."

Section 140.100, RSMo 1949, provides a penalty on each tract of land in the back tax book and fixes fees allowed to the county clerk and collector as follows:

"1. Each tract of land in the back tax book, in addition to the amount of tax delinquent, shall be charged with a penalty of ten per cent of each year's delinquency except that the penalty on lands redeemed prior to sale shall not exceed one per cent per month or fractional part thereof or ten per cent annually.

"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."

Under this section the county collector would be entitled to a fee of ten cents per tract or lot appearing on the delinquent list made by him, and the clerk would be entitled to a fee of ten cents per lot or tract appearing on the back tax book. The back tax book prepared by the clerk will have incorporated therein the back taxes due for prior years. It will be a consolidation of all delinquent and back taxes remaining due and unpaid. The clerk's fee provided in section 140.100 (of ten cents per tract or lot) shall be charged for each year the tract or lot is entered in the back tax book. The collector's fee (provided for in the same section) shall be charged but once, i.e. when the current delinquent list is made by the collector.

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It is further the opinion of this office that the twenty-five cent fee provided for in section 52.290, which has been extended by a collector to a tract or lot when such collector made a delinquent list in the past, should be charged against the tract for the years in which the collector was required to make and record the list in his office. These fees accrued as charges against the tract in the year in which the collector made and recorded the list in his office. The clerk should show in the back tax book the aggregate amount of taxes, interest and fees charged against the land for all the years delinquent as provided in section 140.060, quoted above.

CONCLUSION.

The county collector is entitled to receive ten cents per tract or lot for making the delinquent land list of current taxes and is not required to make a land list of back taxes, and therefore may receive no fees for such services. This fee of ten cents would not be cumulative for each year of delinquency, but would be chargeable only on the current delinquent list.

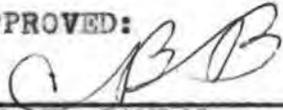
The fee (of twenty-five cents per lot or tract) which has accrued to a county collector for making and recording the back tax list during the years when such a duty was imposed upon the collector shall remain as charges against the lot or tract to be paid by the redeeming party.

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. This "back tax book" will be a consolidation of all back taxes remaining due and unpaid and the clerk's fee will accumulate on each lot or tract for each year the lot or tract is delinquent. The back tax book should show the year or years for which the land is delinquent, the amount of original tax due each fund, the interest due on such tax at the time of making the back tax book, the clerk's fees then due, and the aggregate amount of taxes, interest and clerk's fees charged against such land for all the years delinquent as provided by section 140.060.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney-General

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