

COUNTY COLLECTOR:
PROSECUTING ATTORNEY:
TAXATION:

In suit to collect delinquent tangible personal property taxes in Class 2 counties:
1) Collector should institute necessary proceedings; 2) Prosecuting Attorney should prosecute such suits without additional compensation to himself, and, 3) Such suits should be in the name of the State of Missouri at the relation, and to the use of the Collector.



April 28, 1953

Honorable J. T. Campbell
Representative of Buchanan County
Third District
House of Representatives
Jefferson City, Missouri

Dear Mr. Campbell:

In your letter of April 21, 1953, you requested an official opinion of this office on the following:

"Buchanan County is a county of the second class and in the Collector's Office of Buchanan County, there are many people who fail to pay their personal taxes and become delinquent. My questions are as follows:

"When persons owing a personal property tax in Buchanan County becomes delinquent in the paying of such a tax, is it the duty of the county collector to institute a suit against such a person to collect this delinquent tax?

"If suits are to be filed, is it the duty of the Prosecuting Attorney to handle such suits in the courts or is it the collector's responsibility to employ other council to handle such suits?

"If the Prosecuting Attorney handles such suits, is he entitled to any fee from the county for handling such a suit?

"In case that suits are filed for collection of delinquent taxes, should that be filed in the name of the county collector or in the name of the State of Missouri?"

Honorable J. T. Campbell:

Sections 140.730; 140.740 and 140.750, RSMo 1949, as amended by 1952 Session of the General Assembly, set forth the procedure for collection of delinquent tangible personal property taxes. In answer to your inquiry as to how suits to collect delinquent taxes of this nature are styled, your attention is invited to Section 140.730, Paragraph 2, which reads as follows:

"2. 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, * * *."

There is no specific statutory provision (except as herein-below noted) authorizing the Collector in a second class county to retain an attorney to assist him in the collection of delinquent tangible personal property taxes. However, Section 56.070, RSMo 1949, which deals with the general duties of Prosecuting Attorneys, reads as follows:

"56.070. To represent county, civil suits etc.--He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before the magistrate courts, when the state is made a party thereto; provided, county courts of any county in this state owning swamp or overflowed lands may employ special counsel or attorneys to represent said county or

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counties in prosecuting or defending any suit or suits by or against said county or counties for the recovery or preservation of any or all of said swamp or overflowed lands, and quieting the title of the said county or counties thereto, and to pay such special counsel or attorneys reasonable compensation for their services, to be paid out of any funds arising from the sale of said swamp or overflowed lands, or out of the general revenue fund of said county or counties."

(Underscoring ours.)

Suits to collect such delinquent taxes are of the type which the Prosecuting Attorney is required to represent the county in collecting, viz: they are civil suits in which the county is interested. The exception, above mentioned, provided in Section 151.240, RSMo 1949, is in the collection of delinquent taxes from railroad and street car companies:

"151.240. Duty of prosecuting attorney--additional attorneys--fees.--It shall be the duty of the prosecuting attorney of each county to prosecute all suits for taxes under this chapter. County collectors shall have power, with the approval of the county court, or in St. Louis city, the approval of the mayor thereof, to employ such attorneys as may be deemed necessary to aid and assist the prosecuting attorney in conducting and managing such suits; and the court in which suit is brought shall, if plaintiff obtain judgment, allow such attorneys a reasonable fee for bringing and conducting such suit which shall be taxed against the defendant and paid as other costs in the case. At the request of the collector, the governor may direct the attorney general to assist in the prosecution of any such suits."

There is no provision for additional compensation to the Prosecuting Attorney for rendering this service. The Prosecuting Attorney of a second class county receives

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a salary as total compensation for his services, and any or all fees which accrue to his office must be paid to the County Treasurer at the end of each month. Section 56.270, RSMo 1949, provides the salary for Prosecuting Attorneys of second class counties:

"56.270. Prosecuting Attorney, class two counties--salary.--The prosecuting attorney, in all counties of the second class, shall receive for his services, an annual salary of five thousand dollars, to be paid in twelve equal monthly installments, by the county, by warrants drawn on the county treasury."

Section 140.740, enacted by the 1951 Session of the General Assembly makes allowance for the collection of a fee for the attorney for the Collector on a percentage basis as follows:

"2. In each such action a fee in the amount of ten per cent of the taxes due, but in no event less than five dollars, shall be allowed the attorney for the collector. Such attorney fee and all collector's fees shall be included in the judgment for taxes in such action."

This provision alone does not seem to be sufficient authority for the Collector to retain an attorney other than the Prosecuting Attorney, but instead, is for the purpose of requiring delinquent taxpayers to bear at least a portion of the burden of expense to furnish him to pay his taxes. If such percentage fee is allowed in a case, it is of the type mentioned in Section 56.340; that is, a fee that accrues in the office of Prosecuting Attorney, which fee must be paid over to the county treasury at the end of each month:

"56.340. Fees, class two, three and four counties--records--collection.--The prosecuting attorney, in counties of the second, third and fourth classes, shall charge upon behalf of the county every fee that accrues in his office and

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receive the same, and at the end of each month, pay over to the county treasury all moneys collected by him as fees, taking two receipts therefor, one of which he will immediately file with the clerk of the county court, and shall at the same time make out an itemized and accurate list of all fees in his office which have been collected by him, and one of all fees due his office which have not been paid, giving the name of the person or persons paying or owing the same, and turn the same over to the county court, stating that he has been unable, after the exercise of diligence, to collect the part unpaid, said report to be verified by affidavit, and it shall be the duty of the county court to cause the fees unpaid to be collected by law, and to cause the same when collected to be turned over to the county treasury."

The person to institute proceedings to collect delinquent tangible personal property taxes must, of necessity, be the County Collector since he is the only person who is aware whether persons have, or have not, paid such taxes as are owed by them. Of course, the Prosecuting Attorney cannot proceed with the prosecution of such cases without notification to him by the Collector of the persons who are delinquent in paying such taxes, and the amount thereof.

CONCLUSION

It is, therefore, the opinion of this office that: The County Collector must institute proceedings to collect delinquent tangible personal property taxes; except that the Collector may, with the approval of the County Court, hire an attorney to aid and assist the Prosecuting Attorney in collecting delinquent taxes from railroad and street car companies, the Prosecuting Attorney must prosecute such cases without additional compensation to himself; and that such cases should be styled in the name of the State of Missouri at the relation and to the use of the Collector.

Honorable J. T. Campbell:

The foregoing opinion, which I hereby approve,
was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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