

TAX:  
SCHOOLS:

(1) There is no specific time limitation as to when the clerk of the county court may turn over the supplemental tax book to the county collector to collect taxes authorized by a special tax levy election (2) Taxes authorized by special tax levy election become delinquent on January 1st of the year following the levy (3) Such taxes constitute a lien on the assessable real property in the district, and (4) Payment of those school taxes due at the time of payment, does not preclude collection from those taxpayers of the additional taxes due by virtue of the tax levy election.

January 11, 1954



Honorable Edwin F. Brady  
Prosecuting Attorney  
Benton County  
Warsaw, Missouri

Dear Sir:

Your letter of December 1, 1953, requesting an official opinion, reads in part as follows:

"A tax levy was authorized by the voters of Reorganized School District No. 6 of Benton County, Missouri, at a special election held in said district on November 30, 1953.

1 - "Is the county clerk required by law to and should he make a supplemental tax book for 1953 and extend this additional tax levy and deliver it to the county collector for collection?

2 - "If he should do so, what is the latest date that he is authorized to turn this supplemental tax book over to the county collector?

3 - "When will the taxes extended in this supplemental tax book for 1953 be delinquent? Will they become delinquent on January 1, 1954, as other 1953 taxes?

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4 - "Some considerable amount of 1953 taxes on real estate and personal property in Reorganized School District No. 6 of Benton County have already been paid, and some taxpayers take the position that since they have a receipt for 1953 taxes, including school taxes, that they cannot be required to pay any additional 1953 school taxes. In your opinion, would this relieve taxpayers of paying this additional school tax?

5 - "The county collector also specifically desires to be advised whether this tax is a lien on the property assessed the same as other taxes."

The questions in your letter have been numbered for convenient reference.

All statutory citations are RSMo 1949, unless otherwise noted.

Your question No. 1 has been answered by a previous opinion of this office, rendered on October 7, 1953, to Hon. Donald P. Thomasson, Prosecuting Attorney of Bollinger County. That opinion has been sent to you under separate cover.

Statutory implementation of Article X, Sec. 11(c), Constitution of Missouri, 1945, (amended November 7, 1950), has been made by Section 165.080, Cumulative Supplement, 1951, which reads as follows:

"165.080. Tax levy for maintaining schools increased, how.--Whenever it shall become necessary, in the judgment of the board of directors or board of education of any school district in this state, to increase the annual rate of taxation, authorized by the constitution for district purposes without voter approval, or when a number of the qualified voters of the district equal to ten per cent or more of the number casting their votes for the directors of the school board at the last school election in said district shall petition the board, in writing, for an increase of said rate, such board shall

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determine the rate of taxation necessary to be levied in excess of said authorized rate, and the purpose or purposes for which such increase is required, specifying separately the rate of increase required for each purpose, and the number of years, not in excess of four, for which each proposed excess rate is to be effective, and shall submit to the qualified voters of the district, at the annual school meeting or election, or at a special meeting or election called and held for that purpose, at the usual place or places of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board, due notice having been given as required by section 165.200; and if the necessary majority of the qualified voters voting thereon, as required by article X, section 11 of the constitution, shall favor the proposed increase for any purpose, the result of such vote, including the rate of taxation so voted in such district for each purpose, and the number of years said rate is to be effective, shall be certified by the clerk or secretary of such board or district to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess and carry out the amount so returned on the tax books on all taxable property, real and personal, of such school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants as provided by law. (Emphasis ours).

Thus, the above section contemplates the immediate certification of the tax levy to the county clerk, who shall upon receipt thereof proceed to assess and carry out the amount so returned on the tax books. No specific time limitations have been set for the carrying out of such duty by the county clerk. Therefore, the use of the phrase "on receipt thereof" can only be construed to mean that the duty must be performed as soon after receipt as is reasonably possible. Therefore, the answer to your question No. 2 is: There is no specific date beyond which the county clerk cannot turn over the supplemental tax book to the county collector, but such book should be turned

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over as soon as is reasonably possible after receipt by the county clerk of the result of the vote on the tax levy increase.

Section 140.010 declares all real property taxes to become delinquent on January 1, and establishes a lien therefor:

"140.010. County collector--enforcement of state's lien.--All real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent, and the said county collector shall proceed to enforce the lien of the state thereon, as required by this chapter; and any failure to properly return the delinquent list, as required by this chapter, shall in no way affect the validity of the assessment and levy of taxes, nor of the judgment and sale by which the collection of the same may be enforced, nor in any manner to affect the lien of the state on such delinquent real estate for the taxes unpaid thereon."

Personal taxes are declared to become delinquent on January 1, by Section 140.730(3).

"3. For the purpose of this chapter, personal tax bills shall become delinquent on the first day of January following the day when said bills are placed in the hands of the collector, and suits thereon may be instituted on and after the first day of February following, and within five years from said day."

There is no lien upon personal property for taxes assessed against its owner. State v. Rowse, 49 Mo. 586, 592.

Since there is no statutory provision for changing the date of delinquency, nor provision excepting the type of tax in question from establishing a lien on the assessable property, it must be concluded that the tax in question becomes delinquent on January 1, 1954, and that a lien for the amount of such tax is established on the assessed property in the same manner as other taxes on real estate.

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You state that a considerable number of persons have paid their real estate and personal taxes prior to the election authorizing the tax levy increase, and you inquire whether such persons by virtue of having paid, all of the taxes due at the time of payment, are exempt from payment of this tax levy increase. The answer to this question is: No.

There is no statutory or case law in Missouri as to the conclusiveness of a tax receipt upon the taxing body. 51 Am. Jur., paragraph 960, page 842, makes this statement as to the conclusiveness of such receipt:

" . . . Such a receipt may by statute be made conclusive evidence of payment, but it is clear that in the absence of such a statute, a tax receipt is not conclusive evidence of payment, and the adverse party may prove by any competent evidence that payment has not actually been made."

#### CONCLUSION

It is, therefore, the opinion of this office that

1 - There is no specific time limitation as to when the clerk of the county court may turn over the supplemental tax book to the county collector to collect taxes authorized by a special tax levy election

2 - Taxes authorized by special tax levy election become delinquent on January 1st of the year following the levy

3 - Such taxes constitute a lien on the assessable real property in the district, and

4 - Payment of those school taxes due at the time of payment of taxes does not preclude collection from those taxpayers of the additional taxes due by virtue of the tax levy election.

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

Yours very truly,

JOHN M. DALTON  
Attorney General