

PROSECUTING ATTORNEYS: The fees allowed the attorney for the collector
TAXATION: under the provisions of Section 140.740, RSMo
FEES: Cum. Supp. 1953, should be taxed as costs in
suits brought by the prosecuting attorney in a
county of the second class on delinquent tangible personal property
tax bills and that such fees when received by the office of the
prosecuting attorney should be turned over to the county treasury
at the end of each month as provided in Section 56.340, RSMo 1949.



November 22, 1955

Honorable Lyndon Sturgis
Prosecuting Attorney
Greene County
Springfield, Missouri

Attention: Mr. Benjamin C. Francka,
Assistant Prosecuting Attorney.

Dear Mr. Sturgis:

Reference is made to your request for an official opinion of this
office, which request reads, in part, as follows:

"* * *Please advise as to whether the fees as
outlined in Section 140.740 for attorneys are
to be taxed as costs in suits brought by the
Prosecuting Attorney on delinquent tax bills,
and whether these fees are then to be turned
over to the County Treasury as provided in
Section 56.340, RSMo 1949."

You first inquire whether the fees as outlined in Section 140.740
RSMo Cum. Supp. 1953, are to be taxed as costs in suits brought by the
prosecuting attorney on delinquent tangible personal property tax bills.
Said section provides as follows:

"1. Before any suit shall be brought to recover
delinquent tangible personal property taxes, the
collector shall notify the delinquent taxpayer by
regular mail, addressed to the last known address
of such taxpayer, that there are taxes assessed
against him, stating the amount due and the years
for which they are due, and that if the same are
not paid within thirty days an action will be
brought to recover such taxes; for which notice
a fee of twenty-five cents may be charged and
collected by the collector. In any action to
recover said personal property taxes a certificate
of the collector that he has mailed said notice as

Hon. Lyndon Sturgis

herein required and giving the date of such mailing shall be attached to the petition and shall constitute prima facie evidence that such notice has been duly given.

"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 section relates to suits for the collection of delinquent tangible personal property taxes and provides that a fee in the amount of 10% of the taxes due, but in no event less than \$5.00, shall be allowed the attorney for the collector and included in the judgment. The latter provision is clear and unequivocal in its terms that such fees shall be included in the judgment for taxes.

As was stated in an opinion of this office to J. T. Campbell, Representative of Buchanan County, under date of April 28, 1953, the purpose of said statutory provision is to require delinquent taxpayers to bear at least a portion of the expense of collection. It is our opinion that such fees should be taxed and allowed as costs in all suits brought by the prosecuting attorney for the collection of delinquent property taxes.

You next inquire whether such fees are to be turned over to the county treasury as provided in Section 56.340, RSMo 1949. Said Section reads as follows:

"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 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

Hon. Lyndon Sturgis

collected to be turned over to the county treasury."

Section 56.270, provides for the salary of the prosecuting attorney of counties of the second class as follows:

"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."

In view of the fact that the prosecuting attorney in a county of the second class receives a salary in lieu of fees it is our opinion that the fees provided for in Section 140.740, RSMo Cum. Supp. 1953, are the type which accrue to the office under the provisions of Section 56.340, and must be paid over to the county treasury at the end of each month.

CONCLUSION

Therefore, it is the opinion of this office that the fees allowed the attorney for the collector under the provisions of Section 140.740, RSMo Cum. Supp. 1953, should be taxed as costs in suits brought by the prosecuting attorney in a county of the second class on delinquent personal property tax bills and that such fees when received by the office of the prosecuting attorney should be turned over to the county treasury at the end of each month as provided in Section 56.340, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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