

TAXATION:

Treasurer and ex-officio collector of county of the third class under township organization is not required to collect delinquent taxes of city of the fourth class.

DELINQUENT TAXES:



February 21, 1955

Honorable George S. Thompson
Prosecuting Attorney
Chariton County
Salisbury, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The treasurer and ex officio collector of Chariton County has asked me to secure an opinion from your office as to whether or not a collector in a fourth class county, under township organization, is required to accept delinquent tax lists from cities of the fourth class. I note that V.R.S.M. 1949, Sec. 140.070, seems to indicate that such collector would be required to accept such delinquent lists from such cities. However, it seems to me that V.R.S.M. 1949, Sec. 94.320 (3), is controlling and relieves the county collector from any duty imposed by the above mentioned sec. 140.070.

"Will you kindly send me an opinion on the above matter. The treasurer has indicated that several fourth class cities intend to deliver their delinquent tax lists to him on March 1, 1955. Anything which you might do to expedite your opinion would be greatly appreciated."

It is observed that in your letter you have inadvertently referred to Chariton County as being one of the fourth class. However, an examination of Chapter 48, RSMo 1949, indicates that it is actually one of the third class. Our opinion hereafter expressed is based upon the laws applicable to counties of the latter classification.

Honorable George S. Thompson

Section 140.070, RSMo 1949, referred to in your letter of inquiry, reads 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 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 94.320, RSMo 1949, also referred to in your letter of inquiry, after providing for the preparation of delinquent land and personal lists for cities, contains the following provision:

"The board shall return the delinquent lists to the collector, charging him therewith, and he shall proceed to collect the same in the same manner as provided by law for state and county taxes."

Honorable George S. Thompson

These various and apparently conflicting statutes have been under consideration by the Supreme Court of this state upon several occasions. In State ex rel. Steed et al. v. Nolte, reported 138 S. W. (2d) 1016, the Court had for resolution the following two questions: (1) What is the proper method of collecting delinquent real estate taxes due a city of the fourth class in St. Louis County? (2) What officer should collect such taxes? You will note that with the exception of St. Louis County being of much greater population than Chariton County, which fact was not material to the determination of the questions, the problems are identical.

In disposing of the questions presented, the Court held, l. c. 1019:

"Relators contend that not only must the taxes of respondent city be collected by advertisement and sale as outlined in the original Jones-Munger law, but also that they must be collected by county and not city officers. Relators base this claim on sections 9970 and 9971, R. S. Mo. 1929, Mo. St. Ann. sections 9970, 9971, pp. 8012, 8013; and on certain sections of the Jones-Munger law. Section 9970 provides that the collectors of all cities having authority to levy and collect taxes shall annually return to the county collector all unpaid real estate assessments and section 9971 provides that the county collector shall have power to collect such assessments. These sections were first enacted in 1872, Laws of 1871-72, page 118, at a time when no city had a lien for, or the power to collect, city taxes. In 1879 and later, as we have already pointed out, various classes of cities were granted a lien for and the power to collect their own taxes. Notwithstanding this, sections 9970 and 9971 have been retained in the statutes and section 9970 was repealed and reenacted in substantially the same form in 1933, the only change being to substitute the words 'first Monday in March' for the words 'first day in May.' Laws of 1933, page 450. The apparent conflict between the statutes now numbered 6995 and 9970, 9971, respectively, was considered by

Honorable George S. Thompson

this court in the case of City of Aurora ex rel. v. Lindsay, 146 Mo. 509, 48 S. W. 642, decided in 1898. It was there held that the city collector, not the county collector was the proper officer to collect taxes due a city of the fourth class. That ruling has not since been departed from; so, when the General Assembly repealed and reenacted section 9970 in 1933, in the same form, they are presumed to have adopted the construction so placed on the statutes by this court. State ex inf. Gentry v. Meeker, 317 Mo. 719, 296 S. W. 411. In other words, said section 9970, both before and after its reenactment in 1933, was and is applicable only to the limited number of cities above mentioned, which still return their delinquent taxes to county instead of city officers. The expression 'such cities', appearing sections 9949, 9950, and other sections of the Jones-Munger law and of the Revised Statutes, Mo. St. Ann. sections 9949, 9950, p. 7991, refers to such cities as from time to time have been granted the power to collect their own taxes, and those sections vest in city officers the same duties as to city taxes as are exercised by county officers as to other taxes. Section 9963c makes this clearer by requiring us to read the word 'city' into the various sections where the word 'county' appears.

"Our conclusions in this case apply only to the collection of city taxes in cities of the fourth class. Other cities are governed by different statutes which may or may not compel a different result.

"We hold that the taxes of respondent city should be collected by its proper city officers, but in the manner provided by the Jones-Munger law and not by suit as attempted in the instant case. Accordingly, our provisional rule should be and is hereby made absolute.

Honorable George S. Thompson

CONCLUSION

In the premises, we are of the opinion that the county treasurer and ex-officio collector of a county of the third class under township organization is not required to collect delinquent taxes of cities of the fourth class.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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