

CS op 39, May 28, 1957, Henson

TAXATION:
COUNTY COURTS:

The county court has no authority to relieve the collector from the collection of penalties and interest due on account of delinquent taxes.



October 31, 1957

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W. H. Ritzenthaler

Honorable Clay Cantwell
Prosecuting Attorney
Taney County
Forsyth, Missouri

Dear Mr. Cantwell:

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

"The County Court of Taney County has requested me to write to you for a ruling pertaining to a tax matter here in the county.

"In October, 1956, the State Tax Commission ordered a reduction in the assessed valuation of property in Taney County, Missouri, consisting of Powersite Dam and other real estate belonging to the Empire District Electric Company. This order of reduction was made after the County Collector's tax books had been made up.

"In December of 1956, Empire District Electric Company tendered payment of the tax based upon the reduced valuation. This tender of payment was refused by the Collector pending the outcome of a lawsuit filed in November by Taney County contesting the validity of the reduction made by the State Tax Commission.

"In April of this year the Circuit Court upheld the reduction made by the tax commission and there is an appeal now pending * * *. In June of this year Taney County and Empire District Electric Company entered into the stipulation

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whereby the electric company agreed to pay and Taney County agreed to accept the tax based upon the reduction made by the tax commission; the stipulation is to be without prejudice to the appeal made by Taney County.

"My question is as follows: based upon the above facts what order or orders should the Taney County Court make so that the County Collector should accept the tax money without being charged with penalties and interest."

Under the above stated factual situation, you inquire as to what order or orders the Taney County Court should make so that the county collector can accept the taxes based upon the assessed valuation fixed and determined by the State Tax Commission without being charged with penalties and interest.

Section 140.010, RSMo 1949, provides that all real estate upon which the taxes remain unpaid on the first day of January shall be deemed delinquent. Section 139.100, RSMo 1949, provides that if a taxpayer shall fail or neglect to pay to the collector his taxes on or before January 1, then it shall be the duty of the collector after the first day of January to "collect and account for, as other taxes, an additional tax, as penalty, the amount provided for in section 140.100."

Section 140.100, RSMo 1949, provides 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."

The Supreme Court of Missouri, in the case of State v. Fendorf, 317 Mo. 579, 296 S.W. 787, held that under the above

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referred to sections it is the duty of the collector, beginning on January 1, to collect the penalties and interest provided.

Thus, it is seen that the imposition of penalties and interest on account of delinquent taxes is a matter provided for and regulated by statute.

With the possible exception of Section 140.120, RSMo 1949, which, under the factual situation recited is not in our opinion applicable, we are unable to find any statutory authority permitting the county court to relieve the collector from the collection of penalties and interest on delinquent taxes.

Section 7, of Article VI of the Missouri Constitution provides for a county court to manage all county business "as prescribed by law." The appellate courts of this state, in referring to the power and authority of the county courts, have repeatedly held that such bodies can only exercise such powers as are expressly given by statute. *Arbyrd Compress Co. v. City of Arbyrd*, 246 S.W.2d 104, 109; *Bradford v. Phelps County*, 357 Mo. 830, 210 S.W.2d 996, 999.

Under the above recognized rule and in the absence of any such authority granted by law, we are of the opinion that the county court does not possess the power or authority under the circumstances here presented to relieve the collector from the collection of penalties and interest due on account of delinquent taxes.

CONCLUSION

It is, therefore, the opinion of this office that in the absence of a showing that a tract of land is not worth the amount of taxes, interest and costs thereon, the county court has no authority to relieve the county collector from the collection of penalties and interest due on account of delinquent taxes.

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

Very truly yours,

John M. Dalton
Attorney General

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