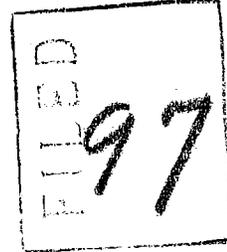


COLLECTION:
DELINQUENT
PERSONAL TAXES:

A County court in a county of the third class is not authorized to compromise a judgment obtained for the collection of delinquent, tangible, personal property taxes. It is the further opinion of this department that it is the duty of the prosecuting attorney of a county of the third class to file suits for the collection of such taxes and to charge the fees authorized by Section 140.740, RSMo Cum. Sup. 1957, and upon collection of same to pay such fees into the county treasury.

December 2, 1959



Honorable Paul E. Williams
Prosecuting Attorney
Pike County
Bowling Green, Missouri

Dear Mr. Williams:

Your recent request for an official opinion reads:

"Several questions have come up in this county relative to the collection of delinquent taxes which I cannot answer by reading material available to me. They are:

1. Is the County Court authorized to compromise a judgment authorized under 140.740 (2) RSMo. 57 supplement?
2. May the collector, with the advice and consent of the County Court, hire the attorney as provided in the above section and pay to him the fee provided even though such attorney is also Prosecuting Attorney of the county in question?
3. If the County Court does in fact compromise such a judgment already rendered with the time for appeal having passed, and remove the provision for attorney fee from said judgment, is the County Court then authorized to pay an attorney's fee to the Prosecuting Attorney, or to any other lawyer hired for that purpose?
4. If such attorney fees are in fact payable, from what fund would they come?"

Honorable Paul E. Williams

In regard to your first question, it is the opinion of this department that a county court is not authorized to compromise a judgment obtained under Section 140.740, RSMo Cum. Supp. 1957. We find no statutory or case authority for any such action, and do not believe that such authority exists.

On December 11, 1942, this department rendered an opinion, a copy of which is enclosed, to Honorable George S. Montgomery, Presiding Judge, County Court of Jackson County. That opinion held, as you will note, that a county court was not authorized to charge or abate a personal tax which had been erroneously assessed in the wrong tax district.

Our answer, then, to your first question is in the negative.

Your second question is whether the collector, with the consent of the county court, may obtain the services of the prosecuting attorney for the collection of delinquent personal property taxes and pay to him the fee provided by Section 140.740, RSMo Cum. Supp. 1957, which section reads:

"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 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

Honorable Paul E. Williams

and all collector's fees shall be included in the judgment for taxes in such action."

It is our opinion that it is the duty of the prosecuting attorney to handle such suits; and that the fee provided by Section 140-740, supra, should be assessed as costs as provided in above section, but that the prosecuting attorney may not retain such fees but that they should be turned over by him to your county treasury.

On April 28, 1953, this department rendered an opinion, a copy of which is enclosed, to Honorable J. T. Campbell, Representative of Buchanan County, Third District. On November 22, 1955, this department rendered an opinion, a copy of which is enclosed, to Honorable Lyndon Sturgis, Prosecuting Attorney of Greene County. These two opinions hold as we have indicated above. It is true that both of these opinions were written with regard to second class counties, whereas we take note of the fact that Pike County is a county of the third class. However, we believe these opinions are equally applicable to counties of the third class. It will be noted that the Campbell opinion is predicated upon the fact that it is the duty of a prosecuting attorney in any county of any classification to represent the county in all civil suits in which the county is interested as set forth in Section 56.070, RSMo 1949; and the further fact that a suit for the collection of delinquent taxes is a suit in which the county is interested irrespective of class, and also upon Section 56.340, which makes it the duty of a prosecuting attorney in counties of the second, third and fourth classes to turn over to the county treasurer at the end of each month all money collected by him as fees. The same general line of reasoning is followed in the Sturgis opinion.

Your third and fourth questions are predicated upon an affirmative answer to your first question, and since our answer to that question was in the negative your third and fourth questions become moot.

CONCLUSION

It is the opinion of this department that a county court in a county of the third class is not authorized to compromise a judgment obtained for the collection of delinquent, tangible, personal property taxes.

Honorable Paul E. Williams

It is the further opinion of this department that it is the duty of the prosecuting attorney of a county of the third class to file suits for the collection of such taxes and to charge the fees authorized by Section 140.740, RSMo Cum. Supp. 1957, and upon collection of same to pay such fees into the county treasury.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:ar/om

Enclosures