

COLLECTOR, CITY: Collector of city of third class responsible
COLLECTOR, COUNTY: for collection of delinquent real estate
COUNTIES: tax of such city. County collector under
no duty to collect delinquent real estate
taxes in city of third class.

April 19, 1962

Honorable Joe R. Ellis
Prosecuting Attorney
Barry County
Cassville, Missouri

FILED
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Dear Mr. Ellis:

This is in response to your recent request for an
opinion, which request reads as follows:

"The county collector of Barry County
has been requested by the City of Monett,
a duly incorporated city lying within
the boundaries of Barry County, the
same being a third class city, to take
action as county collector as follows:
Said city, having submitted to the
county collector a list certified to
by the city collector of delinquent
real estate taxes within the city
boundaries, requests that the county
collector proceed to collect these
taxes and if unable to collect the
same, to advertise and sell said real
estate for delinquent taxes in the
same manner as if the real estate
were subject to delinquent county
taxes.

"Barry County is a third class county.
I believe that sections 140.680 and
140.670 are applicable in this matter.
I find that cases deciding this question
directly are not clear. I might mention
that the case of Gilmore et al v. Hibbs
152 SW 2nd 26 deals to some extent
with this problem.

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"My specific question is as follows:
When a request is made by a city as
aforementioned to the county collector
to perform the above duties, must the
county collector proceed and is it his
duty to proceed as requested."

Section 140.680, RSMo 1959, provides:

"The power to collect such city or
incorporated town tax or special as-
sessments before sale is hereby given
to the county collector after said
delinquent list is received by him.

However, that section is limited in operation to the cities
and incorporated towns included in the classification of
Section 140.670, RSMo 1959, Subsection 1 of which provides:

"The collectors of all cities and
incorporated towns having authority
to levy and collect taxes under their
respective charters or under any law
of this state, which return their
delinquent tax lists to the county
collector to collect, shall, on or
before the first Monday in March,
annually, return to the county col-
lector a list of lands and lots on
which the taxes or special assess-
ments levied by the city or incor-
porated town remain due and unpaid."
(Emphasis supplied.)

Hence, the question then is whether the City of Monett,
as a third class city, returns its delinquent tax lists "to
the county collector to collect". We believe it does not
and that the Barry County Collector is under no duty to act
upon the request of the City of Monett in this instance.

Our holding on this question is based primarily on the
case which you cite in your letter, Gilmore v. Hibbs, (Mo.
Sup. 1941) 152 SW2d 26. In that case, the former owners
of real property located in Carthage brought suit to quiet
title to that property after it had been sold at a delinquent

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tax sale conducted by the city collector. Like Monett, Carthage was a city of the third class.

In ruling against the former owners, the Court clearly established the principle that cities of the third class are not among those cities "still returning their delinquent taxes to the county instead of city officers" and that collectors of such cities are the proper parties to conduct sales of real estate for the collection of delinquent taxes.

The Court said at page 27:

"Court en banc in State ex rel. Steed v. Nolte, 345 Mo. 1103, 1104-1106, 138 S.W.2d 1016-1018, upon a consideration of statutory provisions, Secs. 6994-6996, R.S.1929, Mo. St. Ann. §§ 6994-6996, pp. 5734-5736, now Secs. 7144-7146, R.S. 1939, applicable to cities of the fourth class and identical in all material respects to the above-quoted provisions of Secs. 6780 and 6781, applicable to cities of the third class, held that the city of Clayton, a city of the fourth class, should collect its taxes in the manner provided by the Jones-Munger law. Appellants do not question the soundness of State ex rel Steed v. Nolte. The same result follows with respect to the collection of taxes by cities of the third class generally."

Inasmuch as Sections 6780 and 6781 referred to above contain, for the purposes of this opinion, substantially the same provisions as are now found in our present Sections 94.150, 94.160, and 94.170, we have no hesitancy in holding that the city collector of a city of the third class, rather than the county collector, bears the responsibility of collecting delinquent taxes and conducting the sales necessary to accomplish this end.

Even without the benefit of the Gilmore case, it would be difficult to place any other interpretation on Section 94.170, RSMo 1959, which provides with relation to the duties of collectors of cities of the third class:

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"1. The city council shall require the collector, at the first meeting of the council in April of each year, or as soon thereafter as may be, to make out, under oath, lists of delinquent taxes remaining due and uncollected for each year, to be known as 'the land and lot delinquent list' and 'the personal delinquent list'.

"2. At the meeting at which the delinquent lists are returned, or as soon as may be thereafter, the council shall examine carefully the delinquent lists, and if it appears that all property and taxes contained in the lists are properly returned as delinquent, the council shall approve the lists and cause a record thereof to be entered on the journal, and shall cause the amount thereof to be credited to the account of the collector.

"3. The city council shall return the delinquent lists to the collector, charging him therewith, and he shall proceed to collect the same in the manner provided by law for the collection of delinquent lists of real and personal taxes for state and county purposes."

CONCLUSION

It is the opinion of this office that a collector of a city of the third class is responsible for the collection of delinquent real estate taxes of that city and for conducting sales necessary to accomplish this end, and that the county collector is under no duty to collect such taxes at the request of a collector of a city of the third class.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Albert J. Stephan, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General