

TAXATION: City can not "farm out" collection of taxes.  
State laws prevail over city ordinances.

7-29  
July 22, 1935.



Mr. Chas. E. Bras,  
Member of City Council,  
Slater, Missouri.

Mr. J. O. Shaw,  
Slater, Missouri.

Gentlemen:

We are in receipt of your letter enclosing a copy  
of your city ordinance which is as follows:

"Be it ordained by the Board of  
Aldermen of the City of Slater that  
the Mayor and City Collector be  
authorized and directed to enter into  
a contract with the U. S. Credit  
Finance Company of Sedalia, Missouri,  
to assist the City Collector in the  
collection of all delinquent taxes due  
the City of Slater, Missouri, for 1934  
and prior years, in accordance with the  
statutes of the State of Missouri.  
Read three times and passed this 6th  
day of May, 1935.

"This ordinance shall become effective  
immediately upon its passage."

And a contract between your city and the U. S.  
Credit Finance Company purporting to be pursuant thereto,  
said contract being as follows:

"THIS AGREEMENT entered into this seventh  
day of May, 1935, Witnesseth:

"In accordance with the action taken by  
the Board of Aldermen of the City of

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Slater, Missouri, at its regular session on the seventh day of May, 1935, directing the Mayor and the City Collector of Slater, Missouri, to enter into a contract with the U. S. Credit Finance Company, a Missouri corporation, the undersigned parties enter into the following stipulations, to-wit:

"That the said U. S. Credit Finance Company be, and hereby is, employed to assist the City Collector in the collection of all delinquent taxes, both real estate and personal, due the City of Slater, Missouri, delinquent on January 1, 1935, all as provided for in the 1933 Session Laws, Revised Statutes of Missouri, and as revised by the Missouri State Legislature in April, 1935. That the said U. S. Credit Finance Company shall use its own system of collecting said delinquent taxes and shall have full power of attorney in the prosecution of its work.

"It is understood and agreed by and between the parties hereto that the face value of all taxes collected, directly or indirectly, exclusive of interest, penalties and costs, shall be paid into the Treasury of the City of Slater. Upon payment to the City of Slater the face amount of the tax paid, and to the City Collector and City Clerk their respective fees, the balance of such tax payment shall be allowed said U. S. Credit Finance Company as full compensation for its services.

"It is understood and agreed by all the parties hereto that the following terms and regulations shall govern in the carrying out of this contract.

"This contract shall remain in full force and effect so long as any real and personal property taxes covered by the terms of this contract remain delinquent and unpaid, not to exceed a period of one year.

"All checks issued in payment of delinquent taxes shall be made out to the City Collector of the City of Slater, Missouri, and all cash

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payments shall be made to the City Collector, or to such party as may be designated by the City Collector, of the City of Slater, Missouri.

"The office of the City Collector, of the City of Slater, Missouri, shall be headquarters for the U. S. Credit Finance Company in the prosecution of this work.

"A weekly accounting shall be had between the City Collector, and the U. S. Credit Finance Company. At these accountings all fees rightly due by law to the City Collector and the City Clerk shall be accounted for and paid to the said respective officers, and all commissions and fees rightfully due the said U. S. Credit Finance Company shall be accounted for and paid to the U. S. Credit Finance Company, and the receipt of L. K. Fluhart as president of the U. S. Credit Finance Company for such sums received shall operate as a full and complete release to the City of Slater, Missouri, and to the City Collector, for all collection charges on the part of said U. S. Credit Finance Company on the collections made up to the date of settlement. As to installment payments made on notes said U. S. Credit Finance Company shall receive at the time of the weekly accountings ten (10) per cent, of the amount paid in such installments as a part of the commission due them, the balance of commission to be paid them when the entire note or notes have been paid.

"No suit shall be instituted or filed for the collection of delinquent real or personal property taxes without the authorization of the Board of Aldermen of the City of Slater, Missouri.

"Witness our hands on the day and year first  
above written.

APPROVED: R. L. Hains, Mayor      Frances Eggleston,  
City Collector  
U. S. Credit Finance Company,  
L. M. Fluhart, President

This is a correct copy of the original contract,  
Attest:

S. M. Rhoades, Deputy City Clerk."

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You also inform us that one of your city ordinances provides that the city collector receives 2½ per cent on all licenses, electric light and water charges and all other taxes collected by him as full compensation for his services, and that Section 7 of Ordinance No. 1550, page 46, provides that the city collector shall collect all fees and costs when due and pay them to the parties to whom due, and as compensation therefor he shall receive 5 per cent on all taxes and interest collected by him and paid into the city treasury.

Stated tersely, your inquiry is this: Has a city of the third class the right to enact an ordinance empowering the mayor and collector to enter into a contract of employment with a collection agency, whereby the latter collects the city taxes in the name of the city collector, the collector receiving his compensation for such collections as though he had collected them, and where the principal of said taxes is paid to the city by the collection agency and the penalties and interest, or either of them, allowed by law on delinquent taxes are retained by the collection agency as its compensation, is such course lawful?

Our information is that the City of Slater is of the third class and we apply insofar as we deem pertinent the law applicable to cities of the third class in this opinion.

Section 6721, R. S. No. 1929, provides for the election of certain officers in such cities and that they "may elect a mayor and such other officers as may be necessary to carry this article into effect, who shall hold office until," etc.

Section 6723 provides that the following officers shall be elected: "A mayor, marshal, attorney, police judge, assessor, collector and treasurer."

Section 6728 empowers the mayor to require "as often as he may deem it necessary" any officer of the city to exhibit his accounts and records, and make written report to the council as to any official matter.

Section 6729 declares the methods of removing elective officers.

Section 6730 requires the mayor to enforce the ordinances, etc., and Section 6732 requires him to make reports to the council and among other things to show the estimated receipts from taxes, etc.

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Section 6733 empowers the mayor, with the approval of the council, to appoint a street commissioner and "such other officers as he may be authorized by ordinance to appoint."

Section 6743 requires all elected or appointed officers to have certain qualifications. They "must be qualified voters under the laws and Constitution of this state and the ordinances of the city \* \* \* and must be residents of the city."

Section 6744 provides the oath the officers must take before entering upon the discharge of their official duties and that they must execute a bond, etc., and that if such officer fails to take said oath or give said bond, "his office shall be deemed vacant", and that for any breach of the condition of such bond such city, or any person in the name of such city "for the use of such person" may institute suit.

Section 6745 defines an officer to "include any person holding any situation under the city government or any of its departments, with an annual salary, or for a definite term of office."

Section 6747 empowers the city council to "fix the compensation of all the officers and employees of the city; but the salary of an officer shall not be changed during the time for which he was elected or appointed."

Section 6751 says the duties and powers of officers shall be prescribed by ordinance.

Section 6777 prescribes the duties of the city attorney, and Section 6778 provides certain things with reference to the city counselor and city attorney.

Section 6780 provides that on January 1st "of each year all unpaid city taxes shall become delinquent" and real estate taxes are "made a perpetual lien" in favor of the city, and that "the enforcement of all taxes authorized by this article shall be made in the same manner and under the same rules and regulations as are or may be provided by law for the collection and enforcement of the payment of state and county taxes \* \* \* Provided, that all suits for the collection of city taxes shall be brought in the name of the state, at the relation and to the use of the city collector."

Section 6781 defines the duties of the city collector:

"It shall be the duty of the council to require the collector annually, on the



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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.' It shall be the duty of the council at the meeting at which said delinquent list shall be returned, or as soon as may be thereafter, to carefully examine the same; and if it shall appear that all property and taxes contained in said lists are properly returned as delinquent, the council shall approve the same and cause a record thereof to be entered on the journal, and cause the amount thereof to be credited to the account of the city collector. The city council shall cause the land and lot delinquent list and the personal delinquent list to be returned to the city collector, who shall be charged therewith, and who shall proceed to collect the same in the same manner and under the same regulations as are or may be provided by law for the collection of delinquent lists of real and personal taxes for state and county purposes: Provided, that all suits for the collection of city taxes shall be brought in the name of the state, at the relation and to the use of the city collector."

It will be noted that it is the collector's duty to make out the delinquent tax list and is the duty of the council to require him to do so and of the council to examine it and approve it and to show the same on their records and to charge the city collector with it. "The city council shall cause the land and lot delinquent list and the personal delinquent list to be returned to the city collector, who shall be charged therewith, and who shall proceed to collect the same in the same manner and under the same regulations as are or may be provided by law for the collection of delinquent lists of real and personal taxes for state and county purposes", etc.

The courts with uniformity refuse to sanction or approve or enforce agreements which are against the public welfare on the ground that they are against public policy. The question to determine is, whether the contract between the City of Slater

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and the Collection Agency, whereby the latter takes over the duties of the constituted City Collector and is paid a certain sum therefor, falls within the classification of contracts which are against public policy.

13 C. J. 429 states the law as follows:

"And if an agreement binds a party to do or not to do anything, the doing or omission of which is manifestly injurious to the public interests, the courts must declare it contrary to public policy and therefore illegal and void."

So an agreement which has for its object the disabling of public agencies from performing their full duties to the public has been voided. *Wiggins Ferry Co. v. Chicago, etc. R. Co.*, 128 Mo. 224; *Chouteau v. Union R., etc.*, 22 Mo. App. 286.

13 C. J. 429:

"A people can have no higher public interest, except the preservation of their liberties, than integrity in the administration of their government in all its departments. It is therefore a principle of the common law that it will not lend its aid to enforce a contract to do an act which tends to corrupt or contaminate, by improper and sinister influences, the integrity of our social or political institutions. Public officers should act from high consideration of public duty, and hence every agreement whose tendency or object is to sully the purity or mislead the judgments of those to whom the high trust is confided is condemned by the courts. The officer may be an executive, administrative, legislative, or judicial officer. The principle is the same in either case."

A promise to a collector of taxes to pay him a tax in consideration that he will forbear to collect the same in the manner required by law has been held void as contrary to public policy. 13 C. J. 434; *Packard v. Tisdale*, 50 Me. 376.

In the latter case the court, speaking of the enforcement of a contract regarding taxes, says, 1. c. 377:

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"But, in the present case, the foundation of plaintiff's claim rests upon his omission to do his duty. It is the only consideration of the plaintiff's promise. An agreement by a third person to indemnify an officer for neglecting his duty \* \* \* being founded on an illegal consideration, is void. \* \* \* So a bond given to an officer to induce him to do an act which the law requires of him as a part of his duty, is void. \* \* \* The consideration of the defendant's promise was the plaintiff's neglect to perform his duty."

13 C. J., p. 443, Par. 379:

"A contract is invalid as against public policy the tendency of which is to induce a breach or neglect of official duty."

It is a well recognized rule that cities have only such powers as are expressly or by necessary implication granted by the legislature of the state. The Constitution is the limitation upon the legislative power to grant to cities, and the legislative acts within the constitutional limitations are the limit of power that cities may exercise, and if the legislature in granting certain powers to cities has defined the method of exercise of those powers, then the cities do not have the authority to change or modify such exercise of power.

43 C. J., p. 215, declares the law as follows:

"Since a municipal corporation is a creature of the state, continuing its existence under the sovereign will and pleasure of the state, possessing such powers and such only as the state confers upon it, subject to addition or diminution of power at the state's supreme discretion, municipal regulations must not directly or indirectly contravene the general law, nor can such regulations be repugnant to the policy of the state as declared in general legislation." State v. Kinsey, 262 S. W. 437; Ex. p. Tarling, 241 S. W. 929; Taft v. Shaw, 284 Mo. 531, 225 S. W.



457; Ex. p. Lerner, 281 Mo. 18, 218 S. W.  
331; St. Louis v. Bernard, 249 Mo. 51,  
155 S. W. 394, 41 L. R. A. (N. S.) 177,  
27 L. R. A. (N. S.) 608.

thus: In 44 C. J., p. 1344, Par. 4457, the law is stated

"Where charter or statutory provisions designate the officers to collect municipal taxes, such officers are the only persons who can act as collectors."

And at page 1345, Par. 4461, the following:

"Where, under charter or statute, it is the duty of a particular city officer to collect taxes, a contract made with any other person to collect them has been held ultra vires." See the cases of Ft. Wayne v. Lehr, 88 Ind. 62; Gurley v. New Orleans, 5 So. 659.

In the last above Indiana case on a set of facts about parallel to those under consideration here, the court declined to enforce the contract. In that case there was a large amount of delinquent city taxes and a communication was referred to the committee of the common council on finance, assessments and taxes, this committee being authorized by the city to act in such matter and employ some person to act as deputy collector of said taxes and to make such agreement as to compensation as they saw fit. This committee and the councilmen requested a third party to so act and thereupon the committee and councilmen on the part of the city and the third party entered into a contract by which the third party was to collect the unpaid delinquent taxes and to receive in compensation for his services in that behalf a sum equal to 10 per centum of the amount so collected by him. Pursuant thereto this third party entered upon and performed these services. The city and its council knew that such services were being performed. Under this contract \$26,780.00 were collected. The point was raised in the case that the city had no power to contract thus with the third party for the performance of duties enjoined by law upon the city treasurer, to collect delinquent taxes, and pay him fees therefor, to which the city treasurer was entitled, and because such a contract or agreement was ultra vires. The Supreme Court of Indiana in ruling the case stated:

"In Sections 3085 and 3087, R. S. 1881, it is made the duty of the city treasurer to collect the city taxes,

delinquent, current and unpaid; and in those and the following sections such treasurer alone is clothed with the power to enforce the collection of such taxes. In the general laws of the state for the incorporation of cities we have been unable to find any provision which would authorize or empower the appellant, or its common council, to appoint, employ, contract, or agree with the appellee for the collection of delinquent or unpaid city taxes, or to pay him for his services in making such collections. The appellant was not authorized by law to make the agreement with the appellee, which is the basis of the first paragraph of his complaint, nor to enter into the contract with him, which is counted upon in the second paragraph. Such agreement or contract was, we think, an unwarranted interference on the part of the common council, or rather of its committee, with the powers and duties expressly conferred by law upon the city treasurer, and was beyond the scope of its powers in the premises. We are of opinion, therefore, that the alleged agreement or contract, on the part of the appellant with the appellee, was ultra vires and void."

Likewise in Missouri it is the duty of the city collector to collect the city taxes. The state law says so and definitely has spoken the course that must be followed by the various officers charged with the duty of collecting the city taxes. The city council of Slater had no authority to go contrary to that state law, and the reasoning in the Indiana case, supra, applies with equal force here.

In 44 C. J., p. 1346, Par. 4463, the following is stated:

"While the collection of municipal taxes does not follow the method used in collecting state or county taxes where a different method of collecting municipal taxes is provided, the state or county method prevails if the statute so provides, in which case changes made in the state method apply also to the collection of municipal taxes." (Cases cited.)

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The Constitution of Missouri, Section 18 of Article II, page 67 of Revised Statutes of Missouri, 1929, provides:

"That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging."

If the course your city has followed were approved, it would lead to no end of inefficiency and neglect by the officials in whom the law intrusts the responsibility and duty of personal action, to merely collect the salary or fee. If this policy were approved, then the various officers from the highest to the lowest could "farm out" their official duties and the will of the people would be ignored and subverted. When the public, whether at popular election or by a board or council, votes for a candidate, the personal qualifications of the candidate are largely the things weighed by the voter. The candidate's views as to the duties of the office sought and his faithful efficiency in carrying out those views if inducted into office are largely determinative in his selection, and the requirement of the Constitution that he lend unto the people his personal services in discharging the duties of his office doubtless is the expression of the result of that background and reason.

The public is entitled not only by the express constitutional and statutory provisions to the faithful personal services of the officer elected, but those rights are also safeguarded by the general and common law, and any agreement the tendency of which in operation, regardless of the righteous intention in the particular instance, is to destroy or impair the faithful discharge of official duties will be avoided by the courts as contrary to public policy and against the public welfare. The public policy of the state is expressed and defined by the Constitution, the statutes, the court decisions, and long established and approved practice, and when a contract counter to such public policy is entered into it is void.

Another objectionable feature of the contract is the provision thereof that no suit shall be filed to collect delinquent taxes without the authorization of the Board of Aldermen of said city. The statutes of Missouri having defined the rights and duties of the collector with reference to the collection of delinquent taxes, of course the city council has no power to require the withholding of tax suits until they consent to the filing of the same. In order for this program to be sustained

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it would be necessary to conclude that the city council's rights supersede and have greater authority than the state legislature has, when of course the converse is true.

There are other features we deem objectionable, but we shall not further lengthen this opinion by adverting to them.

If the delinquent city taxes have not been reduced to judgment, the 1935 act passed by the 58th General Assembly, Senate Bill No. 143, approved April 29, 1935, with an emergency clause, eliminates the interest and penalty such as accrued prior to December 31, 1934, on taxes that were delinquent for the year 1934, i. e., on January 1, 1935, regardless of whether the taxes became delinquent on January 1, 1934, or any year prior thereto. A former opinion of this office construing this tax law to have the meaning as herein stated, is enclosed herein. (See opinion dated July 19, 1935, to Hon. Harry C. Salveter, Prosecuting Attorney, Pettis County.) The taxes are paid in full by payment of the original tax and such penalties as would and do accrue on taxes that became delinquent on January 1, 1935, if paid after the 1935 act, supra, became effective, to-wit, on April 29, 1935, and no greater amount is required to pay a given amount of taxes that became delinquent in 1933 or 1932, or any year prior thereto, than is required to pay the taxes that first became delinquent in the year 1935.

#### CONCLUSION

We are of the opinion that the State of Missouri, exercising its sovereign power, has definitely by the state laws defined the machinery and officers required to act in the collection of the city taxes of Slater, and has definitely prescribed the duties, liabilities and responsibilities of the city collector thereof; that it is the city collector's duty to follow said directions, and that the City of Slater does not and did not have the authority to change or vary from the course so defined by the State which the collector should follow; that to permit the collector to receive emoluments of said office while not doing the collecting as required by the state law would be subversive of the public welfare, and that the employment of such second party Collection Agency and paying said Agency the penalties provided by law above the principal of the taxes is an unjustified expense to the city and would tend toward undermining the efficient and proper administration of the duties of the office of city collector, and that the agreement between the City of

Mr. Chas. E. Bras

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Slater and the Collection Agency is contrary to public policy,  
is ultra vires, illegal and void.

Yours very truly,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

DW:HR