

TAXATION:

COSTS OF SALE FOR DELINQUENT TAXES:

Under the delinquent tax laws prior to the Jones-Munger Act, a county court is not authorized to pay for the costs of publication of lands sold for delinquent taxes.

December 16, 1938



Mr. Edw. T. Eversole
Prosecuting Attorney
Jefferson County
Festus, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department based upon the following letter:

"The Jefferson County Republican, a newspaper published at DeSoto, has presented a demand to the County Court of Jefferson County in the total amount of some three hundred and fifty dollars (\$350.00).

"This claim is based upon service by publication in taxes brought at the direction of the County Collector Jefferson County under the old law prior to the Jones-Munger Act.

"It seems that after these suits were brought and the publications made for service in some instances the taxes were paid before sale and in collecting the taxes the Collector and his attorney failed to collect the cost of publication, in other instances defendants died and it was necessary for new publication, and still other instances other heirs were discovered requiring a new publication

and in the meantime the Jones-Munger Act was past and practically nullified the full effect of the original orders and the suits were never pressed for judgment. In all cases the taxes involved in the original suit have been adjusted to the satisfaction of the Collector and County Court and the records are all clear and everyone seems to have received his money except the newspaper carrying the publication.

"I would appreciate your writing me your opinion on whether or not the County Court has the legal authority to pay this demand."

Your request goes to the question of the authority of the county court to pay out the public funds. Such authority must be found in the statutes. Prior to the enactment of the Jones-Munger Law in 1933, the county collectors advertised lands for sale for delinquent taxes. The statute which fixed the fees and compensation for such services and publication charges was Section 9969, R. S. Missouri, 1929. This section provides as follows:

"Fees shall be allowed for services rendered under the provisions of this article as follows: To the collector, except in such cities, four per cent. on all sums collected; in such cities two per cent. on all sums collected--such per cent. to be taxed as costs and collected from the party redeeming. To the county clerk, for making the 'back tax book,' twenty-five cents per tract, to be taxed as costs and collected from the party redeeming such tract. To the circuit clerk, justice of the peace, sheriff and printer, such fees as are allowed by law for like services in civil cases, which shall be taxed as costs in the case: Provided, that in no case shall the state, county or

city be liable for any such costs, nor shall the county court or state auditor allow any claim for any costs incurred by the provisions of this article." (emphasis ours)

This section was repealed by the Jones-Munger Act, yet the provisions of the section apply to all publications made prior to the Jones-Munger Law.

We find that the Kansas City Court of Appeals in the case of Pollard v. Atwood, 79 Mo. App., 193, 197, discussed the provisions of similar statutes in relation to the liability of the state, county and city for payment of costs which may have accrued in connection with the sale of delinquent lands, and in that case at l.c. 197, the court said:

"Section 7626 provides, that in suits for delinquent personal taxes, in no case shall the state, county, city or collector be liable for any costs, nor shall any be taxed against them, or any of them, and the same provision is contained in the Acts of 1895, page 245.

"We find the same provision also in regard to taxes on real estate. Revised Statutes, section 7688, and also to the collection of delinquent taxes in the cities and towns organized under special charters. Acts 1897, p. 213.

"Hence it is plain that no costs in any tax suit could be taxed against a city or town, and therefore the judgments for costs entered against the city of Ferguson are nugatory and absolutely void, being wholly prohibited by our statutes."

It is quite evident from the provisions of this statute and the case cited above that the county court has no authority to pay the publisher for publication of delinquent lands for sale.

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In 1935 the lawmakers provided that the publication charges shall be paid by the county and then when the lands are finally sold that such charges shall be taxed as costs and refunded to the county, but that act would not apply to publications which were made prior to 1935.

CONCLUSION

We are, therefore, of the opinion that the county court is not authorized to pay publication costs for sale of lands sold for delinquent taxes prior to the passage of the Jones-Munger Act and as amended in 1935.

Respectfully submitted

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APPROVED:

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