

TAXATION:  
DEPUTY COUNTY COLLECTORS:  
TAX SALES:

Deputy county collectors in counties under township organization may conduct sales of delinquent lands for taxes.

July 10, 1943

Honorable Charles E. Henry  
Presiding Judge of the County Court  
of Bates County  
Butler, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit the following question:

"Is it necessary that the County Treasurer and Ex-Officio Collector of the County be present in person to conduct these sales or may they legally be held by a deputy appointed by the County Treasurer?"

The County Treasurers in counties under township organization are appointed under the provisions of Section 13792 R. S. 1939.

Section 13989 R. S. 1939 provides in part as follows:

"The county treasurer of counties having adopted or which may hereafter adopt township organization shall be ex officio collector, and shall have the same power to collect all delinquent personal property taxes, licenses, merchants' taxes, taxes on railroads and other corporations, the delinquent or nonresident lands or town lots, and to prosecute for and make sale thereof, the same that is now or may hereafter be vested in the county collectors under the general laws of this state. \* \* \*"

Sections 11126-11134 R. S. 1939 contain the provisions for the collector to follow in collecting taxes on delinquent

lands. In review of the statutes relating to duties of collectors in the collection of taxes and especially those pertaining to the collection of delinquent taxes, we think that these duties come within the class of ministerial.

In the case of *Burton Machinery Co. v. Ruth*, 194 Appeal 195, l.c. 199, the court quoted from *Bouvier's Law Dictionary* the definition of a ministerial act stated as follows:

"\* \* \* 'A ministerial act may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate or legal authority, without regard to or the exercise of his own judgment upon the propriety of the acts being done.' \* \* \*"

On the question of deputy official performing acts of the principal, we find the rule announced in 16 Mo. Appeal 539 in the case of *State ex rel. Hudson v. Miller*. In that case it was claimed that certified copies of the tax bills sued on should not have been admitted in the evidence because they were signed by a deputy. In speaking of this assignment, the court said, l.c. 540:

" \* \* \* \* There is nothing in the argument that this language restricts the power of the deputy to the collection of taxes; since the power to collect taxes necessarily includes the power to make out and certify back tax bills, and to do all other acts necessary to the collection of taxes. It was, therefore, competent to show by a certified copy of his commission, which was competent evidence for that purpose, that the person who had certified these tax bills as the collector's deputy, was, in fact, such deputy. \* \* \* \*"

Also in 6 Mo. 106, 121, it was contended that the registrar of the lands had no right to deputize his authority. The court held, however, that the registrar did have authority to delegate ministerial or clerical duties.

It would seem from these authorities that the ministerial duties of a public officer in this state may be performed by his deputy.

Referring to the statutes relating to treasurers in counties under township organization, we do not find where any authority has been conferred upon such officers to appoint deputies. In the case of *Small v. Field*, 102 Mo. 104, the question of the authority of a deputy clerk to perform certain duties was before the court. At l.c. 118 the court said:

"\* \* \* \*And it is also said by the appealing defendants that no provision is anywhere to be found in those statutes for the appointment of a deputy for a territorial district court. But at common law a ministerial officer had authority to appoint a deputy. Com. Dig.--Tit. Officer (D. I.); Am. & Eng. Cyclop. of Law ---Tit. Deputy, 624. Thus, a sheriff, though his patent of office does not say he may execute his office per se vel sufficientem deputatum suum, yet he may make a deputy. 7 Bac. Ab. --Tit. Offices & Officers, 316 (L).

"The office of clerk of a court seems to be one which, from its nature and constitution, implies a power or right to execute it by deputy. Whenever nothing is required but superintendency in office a ministerial officer may make a deputy. 7 Bac. Abr. 316, 317, --Tit. Offices and Officers. And the rule is general that a deputy may do every act which his principal might do. Com. Dig. Officers, D. 3; Confiscation Cases, 20 Wall. 92. \* \* \* \*"

The principle is also announced in Volume 43 American Jurisprudence, page 219 at Section 461:

"As an abstract proposition, statutory authority is not necessary to enable a public official to appoint sufficient deputies to perform the duties of his office, but

the appointment of deputies is frequently governed by statutes and the right to appoint deputies may be restricted or made mandatory. Thus, a statute may expressly require that there be a deputy, and only one deputy, and no appointment should be valid unless approved by designated officers. But when the law provides that a ministerial officer may appoint a deputy, for whose acts he and his sureties are responsible, and does not limit or restrict him as to whom he appoints, he has authority to appoint whomsoever he pleases.

"The power to appoint a deputy may be presumed. Thus, where an instrument has been acknowledged in another state before a deputy clerk of a court, signing himself as such, and affixing the seal of office, it will be presumed, in support of the certificate, that the clerk had authority to appoint a deputy. A public officer, charged with the performance of official duties, does not necessarily have the power to delegate his authority to a person not authorized by law to act. Yet ministerial officers as a general rule may depute such powers and duties to a third person. But as a general rule, legislative authority is essential to the appointment of a general deputy or a deputy or other assistant to whom to delegate quasi-judicial duties and matters. Thus, such officers as a county clerk or clerk of a county court normally have the right to appoint deputies. \* \* \* \*"

Also under 463 in said volume of American Jurisprudence, the powers of such deputies are stated as follows:

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"Deputies are usually invested with all the power and authority of the principal, and this is one of the tests for determining whether persons employed in a public office to perform only clerical duties, which constitute only a part of the officer's official duties, are mere clerks and employees or deputies. Accordingly, that a process is addressed by a legislative body to the sergeant at arms does not prevent its execution by his deputy, where the resolution under which the warrant was issued plainly contemplates that a deputy could be directed to execute it. And a deputy clerk may authenticate instruments for record when his principal is authorized to do so. \* \* \* \*"

These authorities indicate that the County Treasurer acting as Ex-Officio Collector in counties under township organization may appoint a deputy even though there is no statutory provision for such deputies, and that such deputies may perform ministerial functions of such office.

CONCLUSION.

From the foregoing, it is the opinion of this Department that the County Treasurer and Ex-Officio Collector of a county under township organization may delegate his ministerial duties of selling delinquent lands for taxes to a deputy, and that such official need not be present in person to conduct such sales.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

TWB:PD