

DELINQUENT AND BACK TAXES - Section 9952, Laws of Mo. 1933, p. 429
repeals by implication Sec. 9948, R.S. Mo. 1929.

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March 19, 1935.

FILED
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Hon. David E. Impey,
Prosecuting Attorney,
Texas County,
Houston, Missouri.

Dear Sir:

This department is in receipt of your request for
an opinion based on the following facts contained in your
letter:

*****Under Sec. 9948, R.S. 1929,
provision is made for the making
of a consolidated back tax book
in the odd numbered years by the
county clerk.

Under the act of 1933, Laws 1933,
page 425, the foregoing Sec. 9948
(and nowhere else so far as I have
found) is not directly Sec. 9952,
R.S. 1929 is repealed and a new Sec.
9952 enacted in lieu thereof, and
by said section as it now exists
provision is made for the making by
the collector of a book containing a
statement of delinquent taxes, naming
the years delinquent, etc., which
record of the list of delinquent
taxes in the collector's office is
declared to be such 'back tax book',
wherever that those words are found
in laws pertaining to the collection
of taxes on delinquent lands.

In Texas County, having township
organization, the county treasurer is
collector. Will you therefore advise:
(1) Is a 'consolidated back tax book'
to be made? and (2) if so, by whom?"

In its last analysis the question contained in your letter relates to Sections 9948, R.S. Mo. 1929 and 9952, Laws of Mo. 1933, page 429 and we have before us these questions: (1) Does the new section, 9952, repeal by implication the old section? (2) Are they in pari materia? (3) Does Section 9952 repeal by implication parts of Section 9948?

Section 9948, R.S. Mo. 1929 provides as follows:

"Within thirty days after the settlement of the collector, in the odd numbered years, the several county clerks in each county in this state, and in such cities, the register, city clerk or other proper officer, shall make, in a book to be called the 'back tax book', a correct list, in numerical order, of all tracts of land and town lots on which back taxes shall be due in such county or city, setting forth opposite each tract of land or town lot the name of the owner, if known, and if the owner thereof be not known, then to whom the same was last assessed, the description thereof, the year or years for which such tract of land or town lot is delinquent or forfeited, and the amount of the original tax due each fund on said real estate (and the interest due on the whole of said tax at the time of making said back tax book, together with the clerk's fees then due), in appropriate columns arranged therefor, and the aggregate amount of taxes, interest and clerk's fees charged against each tract of land or town lot for all the years for which the same is delinquent or forfeited; said back tax book, when completed, shall be delivered by said clerk or other proper officer to the proper collector of the county or such city, for which he shall take duplicate receipts, one of which he shall file in his office and the other with the state auditor, and the clerk or other proper officer shall charge such collector with the aggregate amount of taxes, interest and clerk's fees contained in said 'back tax book'. In all such cities the said 'back tax book' shall be made out, in alphabetical order,

in the name of the owner, if known; and if the owner be not known, then in the name of the person to whom such tract or lot was last assessed. All taxes, interest and clerk's fees hereafter contained in the 'back tax book' herein described shall bear interest from the time of the making out of said 'back tax book' at the rate of ten per cent. per annum until paid. In computing interest under this article, a fraction of a month shall be counted as a whole month."

We shall first deal with the question of whether or not Section 9952, *infra*, is in *pari materia* with Section 9948, *supra*. In the case of *McVey v. McVey*, 51 Mo. 406, it was decided that "the settled rule of construction is, that if by any fair interpretation, all the sections of the law bearing on a given topic can stand together, then there is no repeal by implication."

In the case of *State ex rel. v. Spencer*, 164 Mo. 48, the Court said (l.c. 53-54):

"****Repeals by implication are not favored. This is now axiomatic in the law in this state. **** A later statute will not repeal a prior one unless there is such repugnancy between them that the two cannot stand together or be consistently reconciled. **** If two statutes can be read together without contradiction or repugnancy or absurdity or unreasonableness, they should be read together and effect given to both."

In the case of *Decker v. Diemer*, 129 S.W. 936, the Court said:

"Repeals by implication are not favored and both statutes will be permitted to stand if it can be done on any reasonable construction."

The Legislature, in repealing Section 9952, R.S. Mo. 1929 and enacting the new section, 9952, Laws of Mo. 1933, page 429, appears to have abandoned the entire content of the original section and changed completely the substance. The old section was entitled "Enforcement of payment of taxes by suit, etc.", while the new section is styled "Shall record delinquent tax property." Section 9948 states, among other things that

"within thirty days after the settlement of the collector, in the odd numbered years ****", while Section 9952 contains the provision "between the first of January and the first of July in the year 1934 and annually thereafter". Section 9948 states that "the county clerk shall make in a book to be called the 'back tax book'; while Section 9952 states "such 'back tax book' and the recording of same by the collector and certification by the county clerk as herein provided, shall be construed as a making of such 'back tax book' of delinquent real estate, lands and lots."

While Section 9952 in enumerating the duties of the county collector with reference to the recording of delinquent tax property, in many instances is similar to the duties devolving upon the county clerk in Section 9948, yet we are of the opinion that in addition to the apparent conflicts and repugnancies as heretofore set forth, along with many others which might be mentioned, the statutes cannot be read in pari materia or the provisions and life of both cannot be preserved.

We shall next consider whether or not Section 9952, Laws of Mo. 1933, page 429 repeals Section 9948, R.S. Mo. 1929 by implication. We agree with you that in no instance has the Legislature referred to a direct, specific or express repeal of Section 9948.

In the case of Boone Co. Home Mutual Insurance Co. v. Anthony, 68 Mo. 424, the Court said (l.c. 428):

"There are three ways in which a statute may be repealed: First, by a repealing clause; second, by such repugnance that the two laws may not, in reason, both stand; third, by a revision of the whole subject matter of the former law, which is evidently intended as a substitute for it."

In the case of State ex rel. Matacia v. Buckner, 300 Mo. 359, the Court said (l.c. 367):

"Repeals by implication are not dependent upon the presence in titles or acts under them of express mention of the matter so repealed. Repeal by implication is a result of repugnancy between an earlier and a later act. If the later act is passed under a title which, independently considered, is sufficient when tested by Section 28,

Article IV of the Constitution, it repeals every other part of act which is so repugnant to it that the two cannot stand together."

In the case of State ex rel. Vastine v. McDonald, 38 Mo. 529, the Court said (l.c. 531-532):

"A subsequent statute which is clearly repugnant to a prior one necessarily repeals the former statute, although it does not do so in terms."

Under the provisions of the enactment of 1933 known as the Jones-Munger Law, an entirely new system is established for the collection of delinquent real estate taxes. It should be noted that this new delinquent tax law applies only to the collection of delinquent real estate taxes and does not purport to affect the method of collecting personal taxes, railroad taxes, or levee and drainage district assessments.

Section 9948, R.S. Mo. 1929 provides for a consolidated tax book in the odd numbered years. This section was an integral part of the procedure for collecting delinquent taxes under the old system and it is to be noted that this section confines itself entirely to "all tracts of land and town lots on which back taxes shall be due." Under the old system this consolidated back tax book was made each two years. However, Section 9952, Laws of Mo. 1933, page 429 provides as follows:

"Between the first of January and the first of July in the year 1934 and annually thereafter, and immediately upon the effective date of this act, the county collector shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, including therein the delinquent taxes of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state returned delinquent

to the county collector, separately stated, describing such lands or lots as the same are described in the tax books and said delinquent returns, as corrected under sections 9938 and 9942, and charging them with the amount of delinquent tax and naming the years delinquent, separately stated, and in addition thereto a penalty of ten per centum on such tax delinquent for the preceding year and an additional annual ten per centum on taxes for each year prior to the preceding year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same by himself, or deputy, officially; provided, however, if taxes are paid on land or lots delinquent for the preceding year at any time prior to sale thereof as in this act provided, the per centum of penalty added shall not exceed one per centum per month or fractionally part thereof or ten per centum annually. It shall be the duty of the county clerk and county collector to compare the collector's record of such list of delinquent lands and lots as corrected with the corrected "delinquent land list" made pursuant to sections 9938 and 9942, and the county clerk shall certify in the 'delinquent land list' on file in his office that same has been properly recorded in the collector's office and shall attach a certificate at the end of the record of such list of delinquent lands and lots in the collector's office that such record contains a true copy of the 'delinquent land list' on file in his office. And where the words 'back tax book' are now used in laws pertaining to the collection of taxes on delinquent lands, real estate and/or lots, the record of the list of delinquent lands and lots in the collector's office under the provisions of this act shall be held to be (where applicable and except as to city or town 'back tax book')

such 'back tax book', and the recording of same by the collector and certification by the county clerk as herein provided shall be construed as a making of such 'back tax book' of delinquent real estate, lands and lots. Said collector shall be charged with the taxes, penalty and interest shown on such record of the list of delinquent lands and lots."

It is clear that under the new system a delinquent list of lands and lots is made for each year, which list is all inclusive and contains memoranda on all years' taxes which are delinquent. Under this new system each delinquent list of lands and lots is a consolidated list and contains all information. It is to be noted that Section 9948 of the 1929 Revision provides for the clerk of the county court to prepare and make this consolidated tax book.

Section 9945, Laws of Mo. 1933, page 426 provides:

"Hereafter as often as any delinquent tax list or tax bills shall be received by the county court or other proper tribunal or officer from collectors at their annual settlements, the same, except as to the list of delinquent lands, shall be made by the county clerk, and as to the delinquent lands the same shall be entered of record in the county collector's office by the collector, if in counties, and if in cities containing a population of five thousand or more inhabitants, by the proper officer, into a 'back tax book', containing the same facts and in the same form as provided in sections 9948 and 9952, as to lands, city and town lots now delinquent; except that in counties where an alphabetical arrangement of the 'land list' in the assessor's book shall have been required by an order of the county court, such collector's record of the delinquent land list shall be made out in alphabetical order, in the name of the owner, if known,

and if the owner be not known, then in the name of the person to whom the tract or lot was last assessed; the collector shall proceed to collect the taxes due thereon as provided in this chapter in reference to taxes now delinquent; all taxes hereafter becoming delinquent shall bear interest until paid as provided by section 9952, and shall also be subject to the same fees, commissions and charges as in this chapter provided for taxes now delinquent, except that for making and recording the delinquent land list, the collector who makes such book and the clerk or other officer who makes the 'back tax book' shall receive only ten cents per tract, city or town lot, and the clerk for comparing and authenticating such record of the delinquent list of land and lots as made by the collector shall receive five cents per tract, city or town lot."

By virtue of this section, it is now the duty of the county collector to enter of record the list of delinquent lands. The county clerk no longer prepares this list of delinquent lands and under the new law no compensation is allowed the county clerk for making any such record. Under the provisions of Section 9946, supra, and 9969, page 429, Laws of Mo. 1933 the county collector now receives the sums per tract for making the list of delinquent lands and lots that the county clerk heretofore received for making the back tax book.

The provisions of the 1933 law for a list of delinquent lands and lots which each year consolidates all delinquent taxes against any one tract, leaves Section 9948 of the 1929 revision without any force or vitality in respect to the collection of state and county taxes.

CONCLUSION

As hereinbefore stated, Section 9948, R.S. Mo. 1929 is not expressly repealed by Section 9952, Laws of Mo. 1933, page 429, but the two sections appear to be clearly in conflict and repugnant to each other. The new section, 9952, is the later

or subsequent section; hence it will take precedence and by implication repeal Section 9948 insofar as state and county real estate taxes are concerned.

It is further the opinion of this department that Section 9948, R.S. Mo. 1929 prescribes a procedure unnecessary and foreign to the system of delinquent tax collection set up by the Jones-Munger Act, and as the latter act is a complete system and a later enactment, it should take precedence over the former law.

This conclusion is fortified by the fact that the making of the delinquent land list is transferred from the county clerk's office to the county collector's office and that under the new law no compensation is provided for the county clerk as compensation for performing the services required by Section 9948, R.S. Mo. 1929. The consolidated back tax book contemplated by Section 9948 is not now required to be made insofar as state and county real estate taxes are concerned.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General

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