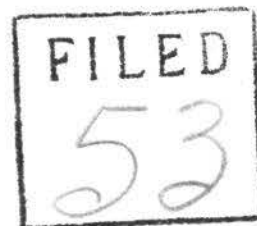


TAXATION: of the fourth class are given power to enforce collection of
personal taxes by Sec. 6995, R. S. Mo. 1929.

April 23, 1937.

4-29



Hon. Guy L. Lloyd,
State Representative,
Lawrence County,
Jefferson City, Missouri.

Dear Sir:

This department is in receipt of your letter of April 13, 1937, requesting an opinion to be rendered to Mr. J. B. Moore, City Collector of Pierce City upon the following questions:

"First:" "Our County Prosecuting Attorney seems to think that there is no way for a city of a fourth class to force the collection of personal taxes'. If there is no law to collect them, please inform me so that our City Clerk will not have to make out a delinquent list of personal property tax. Further inquiry reads as follows:

Second:" "Please give me the interpretation of the Pension Tax law on Municipal owned water works where the citizens of the town own their own plant and maintain it."

We will take up the questions in the order that they were asked.

The power, of a city of the fourth class, to tax real and personal property is given to those cities by Section 6994 R. S. Mo. 1929, and is as follows:

"In assessing property, both real and personal, in cities of the fourth class, the city assessor shall jointly, with the county assessor, assess all property in such cities, and such assessment, as made by the city assessor and county assessor jointly and after the same has been passed upon by the board of equalization, shall be taken as a basis from which the board of aldermen shall make the levy for city purposes. The assessment of the city property, as made by the city and county assessor, shall conform to each other, and after

such board of equalization has passed upon such assessment and equalized the same, the city assessor's books shall be corrected in red ink in accordance with the changes made by the board of equalization, and so certified by said board, and then returned to the board of aldermen. Provided, that in cities which do not elect an assessor the mayor shall procure from the county clerk of the county in which such city is located, and it shall be the duty of such county clerk to deliver to the mayor on or before the first day of July of each year a certified abstract from his assessment books of all property within such city made taxable by law for state purposes, and the assessed value thereof as agreed upon by the board of equalization, which abstract shall be immediately transmitted to the council, and it shall be the duty of said council to establish by ordinance the rate of taxes for the year. A lien is hereby created in favor of such city against any lot or lots or tract of land for any such tract assessed by such city against the same, which said lien shall be superior to all other liens or encumbrances except the lien of the state for state, county or school taxes."

The power to enforce the collection of delinquent taxes in fourth class cities is given in Section 6995 R. S. Mo. 1929, which is as follows:

"Upon the first day of January of each year all unpaid city taxes shall become delinquent, and the taxes upon real property are hereby made a lien thereon. 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, including the seizure and sale of goods and chattels, both before and after said taxes shall become delinquent: 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."

This section provides, among other things, that cities of the fourth class shall collect delinquent taxes, both real and personal, in the same manner that delinquent taxes are collected for state and county purposes. Section 9940 R. S. Mo. 1929, prescribes the manner in which delinquent state and county personal property taxes are to be collected and would govern the procedure in suits to enforce collection of said delinquent taxes in cities of the fourth class.

In *State v. Dunn*, 209 S.W., l.c. 112, the court, in construing a statute, said:

"It is a well settled rule that the Legislature is not to be held to have done a vain and useless thing."

In *Missouri Granitoid Co. v. George*, 131 S.W. l.c. 472, the court, in construing a statute before it, said:

"Statutes are not to be construed so as to pervert the very object aimed at."

The Legislature gave power to cities of the fourth class to assess personalty in Section 6994 R. S. Mo. 1929, and to say that the Legislature did not also provide a means to enforce the collection of the personal tax authorized, would be holding the Legislature to have done a vain and useless thing and pervert the very object of Section 6994 R. S. 1929.

The statutes above referred to are plain and unambiguous and as such are not even open for construction, and clearly prescribe the manner to be used in enforcing collection of personal delinquent taxes in cities of the fourth class.

There are several cases in our reports in which suits have been brought to enforce collection of delinquent personal taxes in cities of the fourth class, and we are citing two merely as a guide. (*Corn v. City of Cameron*, 19 Mo. App. 573; *State v. Collier*, 256 S.W. 455). These cases are not directly in point since the authority of the city to bring said suit was not questioned, but we are citing them, as heretofore stated, merely as a guide.

CONCLUSION.

Therefore, it is our opinion that cities of the fourth class are given power by Section 6995 R. S. Mo. 1929, to enforce the collection of delinquent personal taxes, and the city collector may bring suit to collect said tax in the name of the state, at the relation and to the use of the city collector.

Mem. Guy L. Lloyd, 4.

4-23-37.

We cannot ascertain just what "Pension Tax Law" is referred to in the second question before us, and suggest, if you desire an opinion upon this question, to write and make your request as clear and definite as possible.

Respectfully submitted,

HARRY G. WALTNER, JR.,
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

LLB/LD