

TAXATION:
COUNTY COLLECTORS.

County Collector not required to have seal.

11-9

November 2, 1934.

FILED
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State Tax Commission
Jefferson City, Missouri

Attention of Mr. J. A. Mitchell

Gentlemen:

Acknowledgment is herewith made of your request for an opinion of this office reading as follows:

"This Commission desires an opinion from your office as to whether or not the County Collector should be required to provide himself with a seal for use in properly handling the sale of property for delinquent taxes. At the present time the County Collector has no seal.

We direct your attention to the last three lines, Page 433, Session Acts of 1933, "Such certificate shall be authenticated by the County Collector." Page 440 being a part of section 9957A. The concluding paragraph of the form of deed specified says in part "has hereunto set his hand affixed his official seal the day and year last above written."

The time is close at hand when the Collectors will be required to issue the certificates of purchase and we have request from various collectors regarding this matter, therefore, will appreciate your giving this your early attention."

A careful examination of Senate Bill 94, page 425 et seq. Laws of Missouri, 1933, reveals that there is no provision made for a county collectors seal; that no place in the tax laws is it possible to find any section establishing a seal for the office of county collector. However, it is not difficult to point to direct legislative authorities for the adoption and use of seals by such offices and boards as are authorized and directed to use seals.

Section 1827 R. S. Mo. 1929, provides in part as follows:

"Each court of record in this state shall procure and keep a seal, with such emblems and devices as the court may think proper,
* * * *"

Section 5286 R. S. Mo. 1929, provides in part as follows:

"The commissioner of finance shall devise and provide a seal for the department of finance which shall continue to be the seal of said department.* * * *"

Section 5677 R. S. Mo. 1929, provides in part as follows:

"The seal now used by said department shall be the seal of the office of the superintendent of the insurance department,* * * *"

Section 8207 R. S. Mo. 1929, provides in part as follows:

"The game and fish commissioner shall keep a seal of office, which shall be used to authenticate all papers and documents* * * *"

Section 8316 R. S. Mo. 1929, provides in part as follows:

"* * * the Department of Penal Institutions, by which name it shall have perpetual succession, with the right * * * to adopt and use a common seal* * * *"

Section 9334 R. S. Mo. 1929, provides in part as follows:

The Board (of Education) shall keep a common seal with which to attest its official acts.
* * * *"

follows: Section 9626 R. S. Mo. 1929, provides in part as

"The university* * *shall have* * *power to sue and be sued* * *to make and use a common seal* * *"

follows: Section 9829 R. S. Mo. 1929, provides in part as

"The commission shall have an official seal with the words "State Tax commission" arranged in a circle outside the seal of the state. All process or certificates issued* * *by the commission shall be attested by said seal* * *"

follows: Section 10749 R. S. Mo. 1929, provides in part as

"Such board (of supervisors of drainage districts) shall adopt a seal with a suitable device* * *"

follows: Section 11397 R. S. Mo. 1929, provides in part as

"The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings,* * *"

follows: Section 11504 R. S. Mo. 1929, provides in part as

"The board of fund commissioners shall* * * provide a seal* * *and the official acts of the Board shall be authenticated* * *with the seal attached."

follows: Section 11561 R. S. Mo. 1929, provides in part as

"He (the Recorder of deeds) shall have a seal of office, and shall have power to take the acknowledgment of* * *instruments of writing, * * *and certify the same under his seal of office,* * *"

Section 12365 R. S. Mo. 1929, provides in part as follows:

"The Missouri state horticultural society
* * * shall have * * * power * * * to make and
use a common seal * * *"

Section 13557 R. S. Mo. 1929, provides in part as follows:

"Said board * * * (of Dental examiners) shall
provide and maintain * * * a seal which shall
impress the name of said board, with the word
'seal,' and said seal shall be affixed to all
certificates and to copies of records of said
dental board for the purpose of authenticating
the same, * * *"

Many other similar sections could be cited, all of which specifically authorize the adoption and use of a seal, and which when applicable, provide that the copies of the records must be authenticated by the fixing of the seal. However, no such provision is found in respect to the office of County Collector, nor is there any general requirement that he affix a seal to properly certify his records. A careful examination of Senate Bill 94 reveals that in several places the County Clerk or the County Collector is required to certify to certain things. Sections 9950, 9952, 9952B and 9962A.

It is well established in this State that to certify simply means to testify in writing. In the early case of *McDonald vs. State*, 8 Mo. 283, the Court considered the sufficiency of an indictment. The law required the foreman of the grand jury to "certify" that the indictment was a true bill. The foreman indorsed on the back of the indictment "a true bill" and subscribed his name. Such an indictment was held to be good. This case has been approved in the latter case of *State ex inf. vs. Jones*, 266 Mo. 191-200:

"* * * The statute does not require the certificate to be addressed to the county clerk or any one else. Therquires that 'the proceedings of this meeting shall be certified. . . . to the county clerk,' etc. The word 'certify' is not indispensable in a certificate (*Spratt v. State*, 8 Mo. 247.) 'To certify' is thus defined in 6 Cyc. 729: 'To give certain knowledge or information of; make evident; vouch for the truth of; attest; to

make a statement as to matter of fact; to testify in writing; give a certificate of; make a declaration about in writing, under hand or hand and seal;. . . .to make a declaration in writing;. . . .to testify to a thing in writing.'

The dictionaries and decided cases bear out these definitions. No strict and technical construction is to be put upon the statute involved, nor is a strict and technical compliance with it to be exacted of the 'plain, honest, worthy citizens, not especially learned in the law' in the performance of their duties under it.* * * *

It is only necessary that the seal be affixed when the use of a seal is authorized and established by direct legislative enactment or by long custom and usage. Neither of these exist in the present case. To "certify" implies the use of a seal only when the seal has been provided for as above stated, and when no seal is provided for none is necessary for the legality of the certification. The general rule is as laid down in the case of Doherty vs. M'Dowell, 276 Fed. 7287730 applicable:

" 'The term 'to certify' as used with reference to legal documents, means to testify to a thing in writing; and in the absence of statutory provision declaring the particular form of certification, any form which affirms the fact in writing is sufficient.' "

The necessity for the use of a seal in connection with a certificate is discussed in the case of Marble Co. vs. Ragsdale, 74 Mo. A. 42. In this case, chattel mortgage was offered in evidence, indorsed

*Filed this 20th day of November, A. D. 1895,
at 2 o'clock P.M.

'Chas. A. Greith, Recorder.'

No other certificate was offered nor was the recorder's seal affixed. In holding that it was necessary that the recorder's seal be affixed the Court stated, l. c. 46:

"* * *But there is no competent evidence here that either was done, for there is no certificate of the recorder that either was done, nor does it appear when or in what county it was done, if done at all. The official acts of a recorder cannot be known by his official signature alone. The law requires that his official act shall be attested by his seal of office, before it will take cognizance of the act.* * *"

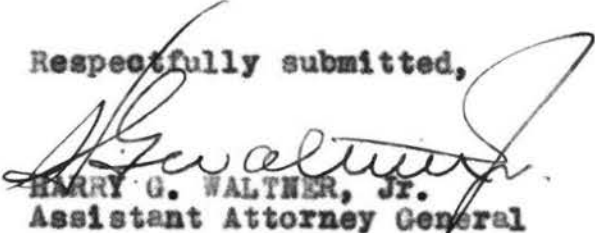
As heretofore shown on page three, Section 11561 R. S. No. 1929, provides that the Recorder of Deeds shall certify "under his seal of office." No such provision is found in respect to the official acts of the County Collector, and hence the conclusion in the foregoing case is not binding on the present issue.

CONCLUSION.

In view of the long established custom respecting the certifications of the County Collectors and the failure of the Legislature to establish a seal and to authorize and require its use in connection with a County Collector's certifications, it is our opinion that from a reading of the entire act and considering it in connection with the other enactments concerning the collection of revenue, it was not intended that a county collector be authorized or required to obtain and use a seal in connection with official certifications.

We therefore conclude that a county collector is not authorized or required to provide himself with a seal for use in handling the sale of property for delinquent taxes.

Respectfully submitted,


HARRY G. WALTHER, JR.
Assistant Attorney General

APPROVED:

ROY McKittrick
Attorney General

HGW:MM