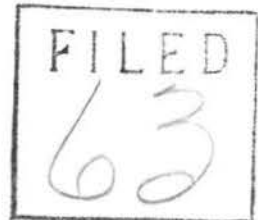


COUNTY COLLECTOR: Can not collect partial payment of  
State, County and School taxes

---

December 15, 1937

12-16



Mr. Alfred F. Moeller  
Prosecuting Attorney  
Ste. Genevieve County  
Ste. Genevieve, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of December 11, 1937, with reference to the collection of state and county taxes by the county collector. Your letter reads as follows:

"At an election held in April of last year the city limits of the city of Ste. Genevieve were extended to include considerable new area. On the 1937 county tax books the taxpayers in the new area are assessed as being in the school district of Ste Genevieve. Some of these taxpayers have appeared at the office of the county collector and have offered to pay all of the items of their 1937 taxes except the school tax. They refuse to pay the school tax until the final determination of a suit pending in the circuit court of this county in which the validity of the city extension is being attacked.

"These 1937 tax bills contain the following items: State tax, County tax, County Road and Bridge tax, Special Road and Bridge tax, School tax; and these taxpayers are offering to pay the amounts involved in

all of the items except the school tax.

"Please give me your opinion as to whether the county collector is required to or can be compelled to accept payment of the other items when the school tax is not paid, or can he insist that all of the items embraced in the 1937 taxes be paid at one time."

In answering this request for an opinion as set out in your letter, this Department is not passing on the legality of the annexation by the city of Ste. Genevieve of the new area, but in *State v. Brown*, 31 S. W. (2d) 215, 224 Mo. App. 1197, the court held:

"Extension of city limits of the city of Kirkwood, such city having less than fifty thousand population, held to have extended limits of Kirkwood School District correspondingly. Revised Statutes Missouri 1919, Section 11236."

Section 11236, Revised Statutes 1919, is identical with and the same section as is Section 9325, Session Laws of 1937, page 449, as to the extension of the city limits including the school district.

The county collector is an office that is not created by the Constitution but is an office created by the Legislature under Section 14, Article IX, of the State Constitution. This was so held in *State v. Hering*, 208 Mo. 708. The collector is merely an agent of the State and must follow the statute in every respect. In *State ex rel. Waddell, Revenue Collector, v. Johnson, et al.*, 296 S. W. 806, the court held

that;

"In suit to enforce lien for taxes for de facto school district, under Rev. St. 1919, Section 12928, collector is agent of state, de facto district not being party to suit, and hence liability for taxes cannot be defeated on ground that collector, as agent of district, cannot collect taxes after district has been disorganized; there being no principal to represent."

The tax collector's duties being purely statutory, he is confined to the law as set out by the statute alone.

In State v. Young, 38 S. W. (2d) 1021, 327 Mo, 909, the Court held that,

"The power to collect taxes is purely statutory and collection of taxes can only be made in accordance with tax books as actually made and furnished to the collector."

In State ex rel. Johnson, Collector of Revenue v. St. Louis, San Francisco Railway Company, 286 S. W. 360, the Court held:

"Public officials connected with taxes are presumed to have properly discharged their proper duties as to levying them, and this presumption can be overcome only by clear testimony."

The collector of Ste. Genevieve County has been furnished with tax books which set out the description

of the land, the amount of tax and especially the name of the school district in which the school tax should be paid.

In the case of State ex rel. Johnson v. St. Louis, San Francisco Railway Company, as above set out, the county collector is bound by the amounts set out in the tax book furnished him by the county assessor and county clerk. The same finding was held in State ex rel. v. Dungan, 177 S.W. 604, 265 Mo. 353.

In the above case, State ex rel. v. Dungan, the Court held that

"Where the assessor has made a valid assessment of lands and has prepared his books containing such assessment, jurisdiction to collect the taxes attaches, and the provisions for the subsequent proceedings are only directory."

Under Section 9880, Revised Statutes Missouri 1929, the collector is charged with the taxes that appear on the tax books and which are furnished him under Section 9877 of the Session Laws of 1933.

Under Section 9886, Revised Statutes Missouri 1929, a bond requires the county collector to faithfully collect all taxes certified to him.

In State ex rel Stone, Internal Revenue Collector v. Kansas City, Ft. Scott and Memphis Railway Company, et al., 178 S. W. 444, a suit was brought by the Internal Revenue Collector against the railroad and its receivers for taxes. The suit was for taxes against the defendant's property in Bates County for the year 1912 and was for \$2,349.01, and for the year 1913 they were \$2,257.44. The railroad company paid all the taxes for the year 1912 except \$23.56,

and in December, 1913, tendered to the collector \$2,228.48 in full payment of the taxes for 1913. The tender was refused. The issue at the trial was in regard to the unpaid balance for the year 1912 and the difference of \$28.96 between the total tax for the year 1913 and the amount tendered. Those two disputed amounts represented that portion of the school taxes which defendants contended were illegal, in this; that various school districts in the county, which were formed of cities and adjoining territory, had increased their rate of levy beyond sixty-five cents on the hundred dollars assessed valuation, and that such excess had resulted in the increase of defendants' taxes by the amounts so in dispute. The court, in affirming the judgment of the lower court which allowed payments of penalty for the non-payment of the taxes when due, said:

"They say that section 11459, Rev. Stat. 1909, requires the collector to receive and receipt for the taxes which may be tendered on any part of a tract of land. That section does not apply to any taxes, except taxes on land. It contemplates the payment of all taxes on a specified part or on an undivided part of the whole tract; but it does not contemplate the payment of a part of the taxes on the whole property. That section has no application to the facts in this case. We know of no law requiring the collector to accept a part of the taxes under the circumstances of this case. The collector's refusal to accept the amount tendered did not result in relieving defendant of the payment of the penalty on the amount tendered.

"We have no power to relieve the defendants of the penalty, nor to

diminish it. Appellants cite *Cottle v. Railroad*, 201 Fed.39, 119 C. C. A. 371. In that case the railroad company paid the taxes admitted to be due and sued to enjoin the collection of the balance. It was decided on that appeal that a portion of the unpaid balance was valid, and the other part void, and the collection of the latter part was enjoined. The Circuit Court of Appeals refused to enforce the penalty of 18 per cent. provided for by the statute of the state of Wyoming, but gave judgment for interest at 8 per cent. It should suffice to say that there is a broad difference between that case and this. There a portion of the tax was held void; here it was all adjudged valid. That was a proceeding in equity; this is a suit at law. This court, in this case, must follow the statute.

"The judgment is affirmed."

In the above case, *State ex rel. Stone v. Kansas City, Ft. Scott and Memphis Railway Company, et al.*, the Court, in the syllabus of its opinion, passed on Section 11459, Revised Statutes Missouri 1909. This section of 1909 is identical with Section 12905, Revised Statutes 1919, and Section 9913, Revised Statutes 1929. The county collector, although his office was created by the Legislature and not the Constitution, is bound by Article X, Section 3, of the Constitution of the State of Missouri, which is as follows:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

Under this article and section the county collector, if he accepted part of the taxes as set out in your letter, would be collecting in the same county different amounts from the people of the city of Ste. Genevieve who had been in the city for some time previous to the new citizens of the city, by reason of the annexation as set out in your letter. It is not discretionary with the collector as to his procedure in collecting the taxes certified to him by the county assessor and county clerk.

In the case of *Walden v. Dudley*, 49 Mo. 419, the Court held:

"A county collector is not personally liable for levying on land embraced within town limits and regularly assessed for town taxes, although the lands were used exclusively for agricultural purposes. It is his duty to collect all taxes contained in the assessor's list; and he has no discretion in the matter, except where property is expressly exempt by law, and the assessment is simply void."

Section 9913, Revised Statutes Missouri 1929, should not be construed to mean that the taxpayer can pay a part of the taxes on one piece of property, but can pay on certain tracts or lots or upon different items at different places and refuse to pay on either of the other lots or tracts providing they are specifically described.

This section has been construed in *State v. Harnsberger*, 14 S. W. (2d) 554, and by construing *State v. Harnsberger* with *State ex rel. Stone v. Kansas City, Ft. Scott and Memphis Railway Company*, 178 S. W. 444, the distinction can readily be seen.

Mr. Alfred F. Moeller

-8-

December 15, 1937

CONCLUSION

Under all of the authorities set out above, and especially under the decision of State v. Kansas City, Ft. Scott and Memphis Railway Company, it is the opinion of this office that the county collector is not required to or cannot be compelled to accept payment of other items in the tax bill when the school tax payment is refused, and he can insist that all of the items embraced in the 1937 taxes be paid at one time.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED

---

J. E. TAYLOR  
(Acting) Attorney General

WJB LC