

TAXATIO: Payment of costs of printing delinquent lists.

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January 30, 1936.



Honorable Henry M. Phillips  
Prosecuting Attorney  
Stoddard County  
Bloomfield, Missouri

Dear Mr. Phillips:

Acknowledgment is herewith made of your request for an opinion of this office on the following matter:

"Section 9952b, page 403, Mo. Session Acts 1935, which provides for publication notice of delinquent land to be sold, the costs of said publication etc., provides among other things: 'The expense of such printing shall be paid out of the county treasury\* \* \* \* \*which cost of printing at the rate paid by the county shall be taxed as part of the costs of the sale of any land or lot contained in such list.'

What class of warrants should be issued to pay these publication costs?

May these costs which are taxed and collected on the land sold be paid by the Treasurer (township organization county) directly to the Newspaper that published the notice, and said amount be deducted from the amount paid to the newspaper out of the county treasury for said publication?

In case the budget allowance of the fund out of which these costs should be paid is exhausted before these costs for said publication has been incurred for the current year, could warrants for the payment of this cost of publication ever be legally issued thereafter?"

We shall answer your questions in the order in which they have been asked.

I.

EXPENSE OF PRINTING DELINQUENT  
LIST CHARGEABLE UNDER CLASS  
FIVE OF COUNTY BUDGET ACT.

As you have quoted the pertinent provision of the Jones-Munger Law relative to the expense of printing delinquent lists of lands and lots we shall not repeat that provision. Turning to the County Budget Law, page 340, Laws of Missouri 1933, we find the various classes which have been provided for, in Section 5. The first class is the expense of keeping insane paupers in the State Hospitals. The second class is the expense of repair and upkeep of certain bridges. The third class is the expense of conducting Circuit Court and elections. The fourth class is county officials salaries and office expenses. It is certain that the expense of publishing the list of delinquent lands and lots cannot fall within any of the first four classifications. Class five is defined as

"Contingent and emergency expense,  
not to exceed one-fifth of the total  
estimated revenue to be received.  
Purposes for which the court proposes  
the funds in this class shall be used  
shall be shown."

The expense of publishing the delinquent lists of lands and lots is in the nature of a contingent expense. It is contingent upon their being delinquent taxes and the costs of the publications cannot be foretold accurately in advance. At least it cannot be determined accurately at the time the budget is required to be made up.

CONCLUSION.

It is therefore the opinion of this office that the expense for publishing the delinquent lists of lands and lots is a proper charge under Class Five of the County Budget law.

## II.

COST OF PRINTING DELINQUENT  
LISTS CHARGEABLE AS COSTS  
WHICH WHEN COLLECTED CANNOT  
BE PAID DIRECT TO NEWSPAPER.

Under point one of this opinion reference has been made to Senate Bill 57, page 402, Laws of Missouri 1935. It should be noted that this bill amended Section 9952b, page 430, Laws of Missouri 1933, by striking out the last sentence of that section and enacting in lieu thereof the following sentence:

"The expense of such printing should be paid out of the county treasury and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed One Dollar for each description, which cost of printing at the rate paid by the county should be taxed as part of the cost of the sale of any lot contained in such list."

With reference to your particular inquiry, it is advisable for us to consider this law as it existed before the amendment adopted in 1935. By referring to the original section 9952b, page 430, Laws of Missouri 1933, we find that under the provisions of that law the newspaper publishing the notice "shall be paid by the purchaser or purchasers of the lands and/or lots sold". Therefore, ~~under~~ the law as existed before the 1935 amendment, the printer was required to rely for his pay upon the land being sold and his printing costs being collected from the purchaser as a part of the costs of the sale. No provision was made in that law for the payment of this expense by the county. In view of the provisions of the law as first enacted, this office held in an opinion rendered shortly after the Jones-Munger Act became effective, that the County Court was not permitted or authorized to pay out of the general revenue fund the expense of printing, but that the printer had to rely solely upon receiving his compensation if and when the costs were paid. Under this old procedure it was the duty of the County Treasurer and Ex-officio Collector, to collect these costs and to pay them to the parties to whom they were due, and thus the newspaper publisher would receive his portion of the costs at the time they were paid. However, it is clear that

the Legislature intended to change this system and to make the County responsible to the newspaper for this cost of publication. To now permit the Ex-officio collector to pay such costs directly to the newspaper would clearly violate the intention of the legislature. It was just such a procedure which the legislature determined to change by the adoption of the amendment in 1935. Judging the intent of the legislature by its acts, we must hold that the course suggested is contrary to such intent and therefore contrary to law.

As the legislature has established a mode of payment, that mode must be followed, another cannot be substituted for it. In this connection we direct your attention to the case of King vs. Riverland Levee District, 279 S. W. 196, in which the Court said:

"\* \* \* our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking vs. McCracken, 60 Mo.App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same. State ex rel. Evans vs. Gordon, supra."

While of course it is true that the newspaper publisher is not a public officer, yet the Legislature has specifically provided a manner or mode in which payment shall be received for making the publication required. Therefore it would be violative of the law for such compensation to be paid on any different basis or in any other mode or manner. The duty of the county treasurer is to deposit the costs received to the credit of the general revenue fund of the county and to permit him to pay such costs directly to the newspaper publisher would be violating the spirit and intent of the law.

CONCLUSION.

It is therefore the opinion of this office that the treasurer and ex-officio collector may not pay costs of publication collected on land advertised for sale and sold in November of 1935 directly to the newspaper publisher who published the notice, but that such costs should be paid into the general revenue fund of the county.

## III.

WARRANTS FOR PAYMENT OF COSTS  
OF PUBLICATION CAN BE LEGALLY  
ISSUED ALTHOUGH ESTIMATED BUDGET  
ALLOWED IN CLASS FIVE IS  
EXHAUSTED.

In the event that the amount that your County Court allotted to Class Five under the budget act has already been exhausted such obligations may be paid under class six of the budget, provided there are funds available in class six for this purpose. If no such funds are available, valid obligations against Class Five may be carried over into the following year and paid out of revenues collected from delinquent taxes for the year in which the obligation is incurred. This office on January 11, 1935, rendered an opinion to the Honorable R. L. Jones, Clerk of the County Court of New Madrid, Missouri, wherein the following conclusion is reached:

"Bearing in mind that it is the duty of the county clerk to list all unpaid obligations, as set forth in Section 4, supra, it is the opinion of this department that if no funds are available in Class 6 for the expenses referred to it will be necessary to carry the same over to the year 1935 and the obligations then be taken care of as the revenue from delinquent taxes comes into the hands of the county."

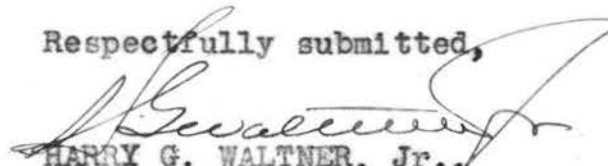
Honorable Henry M. Phillips

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Although the facts in that opinion were not exactly identical to those disclosed in your request, to-wit, in that case there was a shortage of estimated funds in Class Four rather than in Class Five, yet the ruling therein made is applicable to the instant case, and as that opinion answers your question we shall not go into this further. We herewith enclose to you a copy of that opinion for your examination.

Respectfully submitted,



HARRY G. WALTNER, Jr.,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General

HGW:MM  
Enclosure.