COLLECTION OF TAXES: 1927 warrants cannot be used by taxpayer in payment of 1932 taxes.

12-21

December 19, 1935.

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

Dear Sir:

This department is in receipt of your letter of December 12 wherein you make the following inquiry:

> "I am writing you requesting an opinion on the following state of facts as governed by Section 9911, R.S. 1929.
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> "It appears that at some time in the future all the 1932 general revenue warrants of Stoddard County, Missouri, will be paid, and that there will be a surplus of 1932 revenue to be applied on the oldest outstanding general revenue warrants issued by Stoddard County, which happen to be 1927. It appears that as a result of this situation the 1932 revenue will be applied on 1927 warrants. The question I desire to have answered is whether or not as a result of the above situation 1927 warrants--that is, the oldest outstanding county revenue warrants--can be used by the taxpayer in the payment of 1932 taxes. It appears that there are many of these old warrants outstanding and the benefits accruing to the taxpayer will in many instances be considerable, and I desire your opinion as to advising the county collector whether or not he should accept warrants of the oldest outstanding year in payment of taxes for the year in which there are no outstanding warrants. It is, of course, assumed that no warrants could be applied on the 1932 taxes as long as there were

any 1932 warrants outstanding."

The statute relating to the payment of taxes by the taxpayer is Section 9911, R.S. Mo. 1929, which is as follows:

> "Except as hereinafter provided, all state, county, township, city, town, village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes. Warrants drawn by the state auditor shall be received in payment of state taxes. Jury certificates of the county shall be received in payment of county taxes. Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose. Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant; but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, or there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county or city for that year."

In the case of Kercheval v. Ross, 7 F. Supp. 355, a suit was decided in the Federal District Court to the effect that a portion of Section 9911, supra, was violative of the Constitution as it relates to drainage district bonds - it tended to impair a contract which was in force before the amendment made in Section 9911, Laws of Missouri, 1929, page 432.

In regard to county warrants being acceptable for taxes, the courts of this state have construed the same in the case of K.C., Ft. S. & M. R'y. Co. v. Thornton, 152 Mo. 570. In that case it was held that warrants are not receivable in payment of taxes for any year other than that for which the same are issued. The Court said (l.c. 573-576):

> "It is not denied that the decision in State ex rel. Egger v. Payne, 151 Mo. 663, decided by this court, in Banc, in July of this year, applies to and is decisive of this case, nor is it seriously denied that the decision in that case follows the principles announced in Andrew County ex rel. Kirtley v. Schell, 135 Mo. 31, nor yet that it conflicts in any way with what was said in Book v. Earl, 87 Mo. 246, was the purpose of the framers of the Constitution of 1875 in adopting section 12 of Article X of the Constitution. It is contended, however, that the decision in State ex rel. Egger v. Payne, supra, is not in harmony with the decisions of this court in Logan v. County Court of Barton County, 63 Mo. 336; Reynolds v. Norman, 114 Mo. 509, and Wilson v. Knox County, 132 Mo. 387, and that those cases announce the correct rule, and hence it is asked in this case that the decision in Payne's case be reviewed and overruled.
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> "It is true as contended by appellant, that in the cases cited by it, this court, construing section 3205, R.S. 1889, held that collectors of the revenue were bound to receive county and city warrants in payment of any county or city revenue accruing to any county or city issuing such warrants without regard to when such warrants were issued and without regard to the revenue of the year for which the warrants were offered in payment. But in State ex rel. Egger v. Payne, supra, those cases, and that section (3205), as well as sections 3168, 7604 and 8163, R.S. 1889, were expressly considered, and it was held that those cases must be overruled,

and that those sections of the statutes must yield, because the cases and the provisions of the statutes were in conflict with the 'evident purpose and intent of the lawmaking power', that is, with section 12 of Article X of the Constitution. It was plainly pointed out that the purpose of the constitutional provision quoted was to put counties and cities upon a cash basis, and to abolish the credit system upon which they had proceeded before the adoption of the Constitution of 1875, by prohibiting a county or city from becoming 'indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose', etc. It was also expressly held in Payne's case that this was declared to be the purpose of section 12, Article X of the Constitution, in Book v. Earl, and that it was held in that case, that: 'Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.' It was also pointed out in Payne's case that it was decided in Schell's case, that: 'County warrants for past indebtedness, though valid, can not be paid from the revenue provided for current expenses, until all warrants, drawn for expenses of the year for which the taxes were levied, have been paid.' It is also a fact that the prior cases and the statutory provisions relied on by the plaintiff, were fully considered in Schell's case. The result reached in the Payne case was not hastily or ill advisedly arrived at, but was the logical effect of a gradually developed understanding and appreciation of the true meaning

of the provision of the Constitution quoted. As claimed by counsel, section 3205 has been on our statute books since 1835, but prior to the adoption of the Constitution of 1875 there was no organic law which stood in the way of its enforcement. The result was, overwhelming debts were contracted, which necessarily went unpaid or excessive taxation had to be levied to pay them; the effect of which impaired the credit of the counties and cities, engendered recklessness and extravagance in the management of the public business and constantly oppressed the taxpayers. These were the evils that sections 11 and 12 of Article X of the Constitution were intended to remedy, first, by limiting the rate of taxation and, second, by limiting the yearly expenses to the revenue provided for each year. The wisdom of these safeguards has been fully demonstrated by the experience and improved financial status of the counties and cities since those provisions were adopted. It is the duty of the courts to enforce the organic law and to brush aside any statute which conflicts with it, whether it was passed before or after the Constitution was adopted. Under these provisions of the Constitution warrants may be issued to the extent of the revenue provided for the year in which such warrants were issued, and the warrants so issued each year must be paid out of the revenue provided and collected for that year. If the revenue collected for any year for any reason does not equal the revenue provided for that year and hence is not sufficient to meet the warrants issued for that year, the deficit thus caused can not be made good out of the revenue provided and collected for any other year until all the

> warrants drawn and debts contracted for such other year have been paid, or in other words, only the <u>surplus</u> of revenue collected for any one year can be applied to the deficit of any other year. Thus each year's revenue is made applicable, first, to the payment of the debts of that year, and secondly, if there is a surplus any year it may be applied on the debts of a previous year. The intended effect of all which is to abolish the credit system and to establish a cash system in public business. If this rule results in any county not having money enough to pay as it goes or to run its governmental affairs, the remedy is not with the courts. Having reached this understanding of the meaning of the Constitution, it follows, without the necessity of any analytical examination or comparison of statutes or prior decisions, that all statutes or decisions providing or holding a contrary rule must give way."

CONCLUSION

Repeating your question, to-wit, "The question I desire to have answered is whether or not as a result of the above situation, 1927 warrants, that is, the oldest outstanding county revenue warrants, can be used by the taxpayer in the payment of 1932 taxes" - we are of the opinion that the warrants of 1927 cannot be used by the taxpayer in payment of 1932 taxes for the reasons:

(1) That Section 9911, supra, contains the provision "but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, and there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county or city for that year";

(2) That the decision hereinabove quoted - K. C., Ft. S. & M. R'y. Co. v. Thornton, expressly holds that county

warrants are not receivable in payment of taxes for any other year than that for which the same were issued.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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