

TAXATION AND REVENUE : Succeeding Collector should give credit for payment of delinquent taxes on real estate when the county court finds, by its written order of record, that such taxes were paid and a valid receipt was given by the former Collector for such payment, absent fraud or mistake.

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October 3, 1939.

Mr. James Scrimsher  
Collector of Revenue  
Lewis County  
Monticello, Missouri



Dear Mr. Scrimsher:

I desire to acknowledge your letter of September 22, 1939 in which you enclosed a request for an opinion which said request is as follows:

"John Doe presents his canceled check carrying the endorsement of E. W. LILLARD JR., a former collector of Lewis County, as evidence of his partially paying on a \$90.00 tax bill, which was due last year.

"The Current tax receipt of that year, which was made out to John Doe shows a penciled calculation that \$90.00 had been the original amount of the bill and \$75.00 had been taken from it, leaving a balance due of 15.00. The Consolidated back tax book at the time that John Doe came to our office to pay the balance due showed the entire \$90.00, that is the tracts that went to make up the \$90.00 bill, as delinquent.

"After John Doe presented his evidence to the County Court of Lewis County they made an order of record ordering James Scrimsher, the present Collector to give John Doe credit on the unpaid taxes, to the amount of his partial payment.

"Is the Collectors office in the clear to comply with this order of the County Court, or would the Collectors office

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be held responsible for this partial payment, if he follows the order of the County Court.

"Is it your opinion that under the Statutes of the State of Missouri, that the Collector of any County is compelled to accept any partial payment for taxes?

"Please suggest a correct method of handling a situation as in the above facts stated."

In an opinion rendered by this department on September 8, 1939 to Honorable D. M. Githens, Judge of the County Court of Butler County, Missouri, this department held that the county court is the only body which is authorized to compromise taxes on real estate and that they could do so only under the provisions of Section 9950, Laws of Missouri 1933 at page 426; that such court could make such compromise only when it found that the same would not sell for the amount of taxes, penalty, interest and costs. A copy of the above opinion is enclosed herein.

This department rendered an opinion to Mr. Alfred F. Moeller, Prosecuting Attorney of Ste. Genevieve, Missouri on December 15, 1937 holding, that a collector can not collect partial payment of state, county and school taxes when the same is not delinquent. A copy of which is enclosed herein.

This department rendered an opinion to Mr. Bryan A. Williams, Prosecuting Attorney of Bollinger County on September 3, 1937 providing, that the collector had the right to accept payment for less than all the taxes, when delinquent, interest, penalty and costs due and postpone sale for the balance of the taxes, if the remaining years would not come within the statute of limitations. A copy of said opinion is enclosed herein.

On November 29, 1938 this department rendered an opinion to Senator J. C. McDowell at Charleston, Missouri, holding:

"Lands sold under Senate Bill No. 94 for taxes for several years should be sold at one time for all the taxes charged against the land, which are delinquent, at the time of such sale."

Mr. James Scrimsher

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A copy of the above opinion is enclosed herein.

This leaves the following question of your opinion request unanswered:

MUST THE COUNTY COLLECTOR COMPLY WITH THE RECORD ORDER OF THE COUNTY COURT IN GIVING CREDIT FOR PAYMENT OF DELINQUENT TAXES ON REAL ESTATE TO A FORMER COLLECTOR FOR WHICH SUCH FORMER COLLECTOR GAVE A RECEIPT BUT DID NOT GIVE CREDIT ON THE "BACK TAX BOOK". IF HE DOES COMPLY WITH SUCH ORDER IS THE COLLECTOR LIABLE.

Section 9952a of the Laws of Missouri at page 430 is, in part, as follows:

" \* \* \* Provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor. The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

Article 6, Section 36 of the Constitution of Missouri, is as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Section 12111 R. S. Mo. 1929, is as follows:

"In the settlements required by law to be made by the county court with treasurers and other officers holding county funds, whether quarterly, yearly or otherwise, it shall be the duty of the court, or some judge thereof, to ascertain by actual examination and county the amount of balances and funds in the hands of such officers, and to what particular fund it appertains, and such examination and count shall include all funds on hand up to the day on which such settlement is made."

Section 12162 R. S. Mo. 1929 is, in part, as follows:

"The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party;  
\* \* \*".

A taxpayer paying taxes on real estate to the collector and taking a receipt therefor, must, under the provisions of Section 9952a, supra, be given credit for such payment if such receipt be valid.

By our constitution, county courts are created and given jurisdiction to transact all county business. Under the provisions of the above statutes such courts are given the right to settle all accounts to which the county should be a party.

The courts have consistently held that the county courts have the above rights and duties, but their duties on such matters are not *res adjudicata*.

In the case of *State ex rel. vs. Diemer*, 255 Mo. 336, 351, the court held:

"In the allowance of claims against a county or in settling with county officers, county courts do not act so strictly as

a court, or in the performance of a judicial function, that their allowance or disallowance of a claim is res adjudicata. Something of substance might be said in favor of the contrary theory, but at an early date this court considered our statutes and announced the doctrine, on the reason of the thing and because of a good public policy, that county courts in the allowance of claims, as in settling with officers, acted as a mere public board of audit, as ministerial, administrative or fiscal agents for the county and not strictly as a court, hence we have uniformly refused to apply the doctrine of res adjudicata to their orders allowing or disallowing claims against the county, or to their settlements with county officers. That doctrine has always been adhered to and must be accepted as settled."

The same principle was stated by the court in State vs. Thompson, 337 Mo. 328, 335:

" \* \* \* The cited cases relate to settlements made between county officers and county courts. The unanimous holdings in these cases are exemplified in the following excerpt from Holt v. Rea, Supra, l. c. 1241:

"It is settled law that settlements made between a county collector and the county court do not have the force and effect of a judgment and are not res adjudicata. In making such settlements the county court acts as a public accountant or financial agent of the county, and settlements so made amount to no more than an account-

ing between the principal and agent, or a settlement between individuals, and may be inquired into and corrected or set aside on the ground of fraud or mistake of fact. (State ex rel. Scotland County v Ewing, 116 Mo. 129, 136, 22 S. W. 476; State ex rel. Lawrence County v. Shipman, 125 Mo. 436, 28 S. W. 842.)"

The court in the above decision further ruled:

" \* \* \* In a suit by a county over a double charge made by a county officer in effecting a settlement with the court, it was held that any mistake in the settlement clearly proved is open to correction, in the same manner as though it were made with an individual. (Marion County v. Phillips, 45 Mo. 75.)"

The duties and liabilities of county ministerial officers are construed in the case of County of Jackson vs. Fayman, 329 Mo. 423, 441 as follows:

"Much is also said as to the heavy penalties imposed on county treasurers as ministerial officers in refusing to pay county warrants regularly issued by the county and presented for payment. It is true that such ministerial officers are not and should not be required to investigate and determine for himself the legality or validity of such warrants and should ordinarily pay same without question. Here, however, the constituted authority which had cause this warrant to be issued, and whose order gave it birth and vitality, had taken on itself the responsibility of annulling its action and stamping out its life. The

whole trouble here arises from the fact that this ministerial officer undertook to decide for himself that the action of the county court in issuing this warrant was a judicial act and a finality and that such court did not have the judicial power to set aside or modify its judgment after the term. That ministerial officers are not generally visited with penalties or held personally responsible when acting in good faith is held in State ex rel. v. Diemer, 255 Mo. 336. That they must at times assume some risk in the performance of judicial duties is unavoidable, and we commend defendant's action in taking a bond for his own protection on paying this warrant."

A failure, by the collector, to give credit for paid taxes on real estate and a sale of such real estate for the payment of such paid taxes makes the collector liable for damages under the provision of Section 9963a, Laws of Missouri 1933 at page 447 which is, in part, as follows:

" \* \* \* or whenever any tract, parcel or lot of land shall have been assessed to two or more different persons and the entire tax shall have been paid by either of them, and the collector shall sell such land as delinquent on account of the non-payment by the other party of the taxes assessed against him thereon, the party damaged by such sale, or his legal representatives, may, in an action against the officer by whose act or omission such damages have been caused, or upon his official bond, recover a judgment for the amount of all the damages, costs and charges to which such owner may have been subjected in consequence of such failure or such dereliction of duty, and in addition a ten per cent penalty thereon."

Mr. James Scrimsher

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CONCLUSION

Therefore, it is the opinion of this department that payment made to a collector, of taxes on real estate, and evidenced by a tax receipt given by such collector and later found to be valid, by a written order of the county court during the term of a succeeding collector, should be credited by such succeeding collector. That no liability would ensue, absent fraud or mistake.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney-General

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