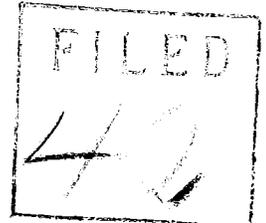


TAXATION:
SALE OF DELINQUENT LANDS FOR
TAXES BY CITIES:

All cities are not within the provisions of Section 9970, as amended by Laws of 1933 pertaining to the returning of lists of delinquent city taxes to the county collector.

January 23, 1941

Honorable Walter C. Hotaling
Prosecuting Attorney
Linn County
Linneus, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion on the following questions:

"1. Does a sale of lands by the County Treasurer and ex-officio collector, under Section 9952a, et seq., as added, Laws of 1933, for delinquent State and County taxes, extinguish the lien of delinquent City taxes for the same years?

"2. Has the above mentioned section been construed so as to authorize a City of about 4000 population to sell lands for the enforcement of the lien of delinquent City taxes?

"3. Is there any statutory provision exempting a City of about 4000 population from returning a list of delinquent City taxes to the County Treasurer, as provided by Section 9970, as amended, Laws of 1933?"

On the first question which you have submitted, I find that this department, by an opinion dated September 28, 1938, and written to Honorable Oscar T. Honey, Mayor, Chaffee, Missouri, covered this question. We are enclosing copy of this opinion for your information.

Hon. Walter C. Hotaling (2)

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We are also enclosing copy of an opinion to Hon. O. L. Robuck, City Collector, LaPlata, Missouri, dated October 31, 1934, and an opinion to Honorable C. D. Bray, City Attorney, Campbell, Missouri, dated September 28, 1939, pertaining to the same subject. These may shed some light on your questions.

In answer to your third question, will say that there seems to be some confusion with the city authorities as to whether or not they should collect delinquent taxes or whether the delinquent taxes should be certified to the county collector for collection. For instance, Section 6995, R. S. Missouri 1929, pertaining to cities of the fourth class, directs that the city collectors of such cities shall collect the delinquent taxes. By an examination of the tax statutes referring to other classes of cities you may be able to find that a similar section will be found referring to such cities.

In 1933, Laws of Missouri 1933 at page 450, Section 9970, as amended, it will be seen that it is the duty of the collectors of all cities and incorporated towns to return to the county collector their delinquent lists for collection. Apparently there is conflict in the statutes as to who should collect delinquent city taxes. However, we think that the Supreme Court, in the case of State ex rel. Steed et al. v. Nolte, 138 S. W. (2d) 1016, has explained these statutes and settled this controversy. In that case the delinquent taxes of a city of the fourth class were before the court and the court held that the city collector was the proper one to collect these delinquent taxes. At l. c. 1019 the court, in discussing these contradictory statutes, said:

"Relators contend that not only must the taxes of respondent city be collected by advertisement and sale as outlined in the original Jones-Munger law, but also that they must be collected by county and not city officers. Relators base this claim on sections 9970 and 9971, R. S. Mo. 1929, Mo. St. Ann. sections 9970,

9971, pp. 8012, 8013; and on certain sections of the Jones-Munger law. Section 9970 provides that the collectors of all cities having authority to levy and collect taxes shall annually return to the county collector all unpaid real estate assessments and section 9971 provides that the county collector shall have power to collect such assessments. These sections were first enacted in 1872, Laws of 1871-72, page 118, at a time when no city had a lien for, or the power to collect, city taxes. In 1879 and later, as we have already pointed out, various classes of cities were granted a lien for and the power to collect their own taxes. Notwithstanding this, sections 9970 and 9971 have been retained in the statutes and section 9970 was repealed and reenacted in substantially the same form in 1933, the only change being to substitute the words 'first Monday in March' for the words 'first day in May.' Laws of 1933, page 450. The apparent conflict between the statutes, now numbered 6995 and 9970, 9971, respectively, was considered by this court in the case of City of Aurora ex rel. v. Lindsay, 146 Mo. 509, 48 S. W. 642, decided in 1898. It was there held that the city collector, not the county collector, was the proper officer to collect taxes due a city of the fourth class. That ruling has not since been departed from; so, when the General Assembly repealed and reenacted section 9970 in 1933, in the same form, they are presumed to have adopted the construction so placed on the statutes by this court. State ex inf. Gentry v. Meeker, 317 Mo. 719, 296 S. W. 411. In other words, said

section 9970, both before and after its reenactment in 1933, was and is applicable only to the limited number of cities above mentioned, which still return their delinquent taxes to county instead of city officers. The expression 'such cities', appearing in sections 9949, 9950, and other sections of the Jones-Munger law and of the Revised Statutes, Mo. St. Ann. sections 9949, 9950, p. 7991, refers to such cities as from time to time have been granted the power to collect their own taxes, and those sections vest in city officers the same duties as to city taxes as are exercised by county officers as to other taxes. Section 9963c makes this clearer by requiring us to read the word 'city' into the various sections where the word 'county' appears.

"Our conclusions in this case apply only to the collection of city taxes in cities of the fourth class. Other cities are governed by different statutes which may or may not compel a different result."

It will be noted from the foregoing opinion that said section 9970, supra, has been brought down through the statutes as an amendment to laws which were enacted in 1872 (Laws of 1871-72, page 118), and that this original act applied to cities which had no lien for or power to collect city taxes. The court, in the Nolte case, supra, in discussing the history of these conflicting sections, finally held that the provisions of said Section 9970 only apply to cities which do not have a lien for or power to collect city taxes. So, if under a statute any city, regardless of its class, has a lien for and power to collect city taxes, then the provisions of Section 9970, supra, do not apply, and that city collects its city taxes through its proper

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official as outlined in the Jones-Munger law.

CONCLUSION

From the foregoing it is the opinion of this department that if a city has a lien for and power to collect its own taxes, then it is not required to return its list of delinquent city taxes to the county officer for collection but may proceed by its proper officials to collect such delinquent taxes as outlined by the Jones-Munger law, Laws of Missouri 1933 at page 425, and as provided by the taxing statutes of such city as they may be applicable thereto.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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Encs. (3)