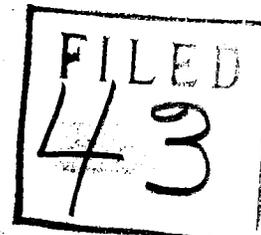


TAXATION AND REVENUE: City collectors in cities of the fourth class cannot proceed under Section 11086, but must follow the provisions of the Jones-Munger Act.

June 17, 1941



Mr. Frank I.S. Huffhines
Prosecuting Attorney
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Dear Sir:

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

"I would appreciate an opinion in regard to the above section as to whether or not said section applies to city collectors of the fourth class. If not please advise the proper procedure as to same. (Section 11086, Revised Statutes 1939)."

The question of the procedure with reference to the collection of delinquent taxes in cities of the fourth class was under consideration by the Court in the decision of State vs. Nolte 138 S. W. (2nd) 1016. We think this decision answers your question and we quote the following excerpts from the same, l.c. 1017, 1018, 1019:

"The two questions confronting us are so closely related that we will consider them together. Those questions are: What is the proper method of collecting delinquent real estate taxes due a city of the fourth class in St. Louis County? What officer should collect such taxes? * * * *

"Now, since the enactment of House Bill 677 and similar measures at the 1939 session, we have two methods for the collection of state and county taxes; in St. Louis County, Jackson County, and the City of St. Louis, by suit; in all the remainder of the state, by advertisement and sale. In giving effect to section 6995, shall we say that city taxes due a city located in St. Louis County shall be collected in the same manner as provided for the collection of state and county taxes in St. Louis County, or in the same manner provided for the collection of state and county taxes in the state at large? Respondents say that the method in force for collecting state and county taxes in St. Louis county should apply to the collection of taxes due to cities in the same county, and to hold otherwise would result in confusion. The argument that taxes due cities of the fourth class should be collected by one method in two counties and taxes due cities of the same class should be collected by a different method in the other one hundred and twelve counties, is not very convincing. The constitutional question as to whether the same method must prevail in all cities of the same class has not been raised and, of course, we do not decide it. As to possible confusion which may ensue from the collection of city taxes by one method and the collection of state and county taxes in the same county by a different method, we call attention to the fact that prior to the Jones-Munger law the statutes provided for the collection of city taxes in first class cities by sale without suit, sections 6207-6240, R. S. 1929,

Mo. St. Ann. Sections 6207-6240, pp. 5330-5345, while in the same counties state and county taxes were collected by suit. We find nothing in House Bill 677 to indicate a legislative intention to remove cities of the fourth class from the operation of the Jones-Munger law. That the General Assembly did not so intend, we think is made clear by section 9952a-6 of House Bill 677, Mo. St. Ann. Section 9952A-6. That section provides for the enforcement of the 'lien of the state,' which must mean the lien for state and county taxes. House Bill 677 makes no provision for the enforcement of a lien for taxes due a city of the fourth class which, as already pointed out, is vested in the city.

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

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of the fourth class. Other cities are governed by different statutes which may or may not compel a different result.

We hold that the taxes of respondent city should be collected by its proper city officers, but in the manner provided by the Jones-Munger law and not by suit as attempted in the instant case. Accordingly, our provisional rule should be and is hereby made absolute."

CONCLUSION

In view of the above decision, we are of the opinion that Section 11086 does not apply to city collectors of cities of the fourth class with respect to real taxes and the procedure, as outlined in the decision quoted supra, should be followed. The Jones-Munger Act does not appear to have affected the collection of personal taxes in cities of the fourth class. Therefore, in so far as applicable, the provisions of Section 11086, as said Section may apply to the collection of personal taxes, would still be effective.

Respectfully submitted

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APPROVED:

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OWN:RT