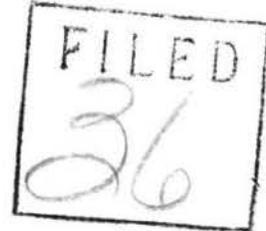


COUNTY COLLECTOR: Cannot accept payment of general taxes and exclude district water tax

1-14
January 11, 1938

Mr. Clifford T. Halferty
Collector of Revenue
Clay County
Liberty, Missouri



Dear Sir:

This will acknowledge receipt of a request of January 3, 1938, for an official opinion, which reads as follows:

"There has been organized and is in operation in Clay County a 'Public Water Supply District'; formed under the statute passed by the 1935 Legislature.

"A certain taxpayer who owns property both within the District and out of the district as follows:

"Personal property -outside district-	
Total Tax	\$2.06
112 acres, property outside district	
Total Tax	65.52
103 acres, in district-water tax-	
\$24.91 - Total tax	86.92
Total of Tax Bill -----	<u>\$154.50</u>

"The above taxpayer tendered me a Bank Draft for \$129.59 being the amount of his taxes less the Water District tax. I refused to accept same, basing my action on 'Sec. 12, page 334 of the 1935 Session Acts.' However, I suggested to the taxpayer that he pay on the first two items, that is, his personal tax

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and the 112 acres, both being outside the water district.

"I trust I have made the facts clear in this case and request your opinion on the question 'Should I accept payment on a tax bill with a specific tax cut out'."

According to Section 12, page 334 of the 1935 Session Acts, as set out in your request you are compelled to collect the taxes assessed under this act. The part of the section which is mandatory upon you to make the collection reads as follows:

" **** The collector of the county court or respective clerks or the county courts shall enter such levies on the tax books of the county in the same manner as school district taxes are entered, for the use of the county collector. The taxes thus levied and extended upon the tax books shall be collected and the payment thereof enforced at the same time and in the same manner as is provided for the collection and payment of taxes levied for state and county purposes and such taxes, when collected, shall be remitted by the collector or collectors of the revenue to the treasurer of the district."

This part of Section 12 of the Act alone is sufficient to give you authority to collect all of the taxes at the same time. This Act, in its entirety, was upheld as to validity and constitutionality in the case of Grossman v. Public Water Supply District, Number 1, of Clay County, et al., 96 S.W. (2d) 701, 339 Mo. 348. I believe that the defendant in this case

is the same public supply district that you are inquiring about.

The county collector is an office that is not created by the Constitution, but is an office created by the Legislature under Section 14, Article IX, of the State Constitution. This was so held in *State v. Hering*, 208 Mo. 708. The collector is merely an agent of the State and must follow the statute in every respect. In *State ex rel. Waddell, Revenue Collector, v. Johnson, et al.*, 296 S. W. 806, the court held that;

"In suit to enforce lien for taxes for de facto school district, under Rev. St. 1919, Section 12928, collector is agent of state, de facto district not being party to suit, and hence liability for taxes cannot be defeated on ground that collector, as agent of district, cannot collect taxes after district has been disorganized; there being no principal to represent."

The tax collector's duties being purely statutory, he is confined to the law as set out by the statute alone.

In *State v. Young*, 38 S. W. (2d) 1021, 327 Mo. 909, the Court held that,

"The power to collect taxes is purely statutory and collection of taxes can only be made in accordance with tax books as actually made and furnished to the collector."

In *State ex rel. Johnson, Collector of Revenue v. St. Louis, San Francisco Railway Company*, 286 S. W. 360, the Court held;

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"Public officials connected with taxes are presumed to have properly discharged their proper duties as to levying them, and this presumption can be overcome only by clear testimony."

In the case of State ex rel. Johnson v. St. Louis, San Francisco Railway Company, as above set out, the county collector is bound by the amounts set out in the tax book furnished him by the county assessor and county clerk. The same finding was held in State ex rel. v. Dungan, 177 S. W. 604, 265 Mo. 353.

In the above case, State ex rel. v. Dungan, the court held that,

"Where the assessor has made a valid assessment of lands and has prepared his books containing such assessment, jurisdiction to collect the taxes attaches, and the provisions for the subsequent proceedings are only directory."

Under Section 9880, Revised Statutes Missouri 1929, the collector is charged with the taxes that appear on the tax books and which are furnished him under Section 9877 of the Session Laws of 1933.

Under Section 9886, Revised Statutes Missouri 1929, a bond requires the county collector to faithfully collect all taxes certified to him.

In State ex rel. Stone, Internal Revenue Collector v. Kansas City, Ft. Scott and Memphis Railway Company et al., 178 S. W. 444, a suit was brought by the Internal Revenue Collector against the railroad and its receivers for taxes. The suit was for

taxes against the defendant's property in Bates County for the year 1912 and was for \$2,349.01, and for the year 1913 they were \$2,257.44. The railroad company paid all the taxes for the year 1912 except \$23.56, and in December, 1913, tendered to the collector \$2,228.48 in full payment of the taxes for 1913. The tender was refused. The issue at the trial was in regard to the unpaid balance for the year 1912 and the difference of \$28.96 between the total tax for the year 1913 and the amount tendered. Those two disputed amounts represented that portion of the school taxes which defendants contended were illegal, in this; that various school districts in the county, which were formed of cities and adjoining territory, had increased their rate of levy beyond sixty-five cents on the hundred dollars assessed valuation, and that such excess had resulted in the increase of defendants' taxes by the amounts so in dispute. The court, in affirming the judgment of the lower court which allowed payments of penalty for the non-payment of the taxes when due, said:

"They say that section 11459, Rev. Stat. 1909, requires the collector to receive and receipt for the taxes which may be tendered on any part of a tract of land. That section does not apply to any taxes, except taxes on land. It contemplates the payment of all taxes on a specified part or on an undivided part of the whole tract; but it does not contemplate the payment of a part of the taxes on the whole property. That section has no application to the facts in this case. We know of no law requiring the collector to accept a part of the taxes under the circumstances of this case. The collector's refusal to accept the amount tendered did not result in relieving defendant of the payment of the penalty on the amount tendered.

"We have no power to relieve the defendants of the penalty, nor to diminish it. Appellants cite *Cottle v. Railroad*, 201 Fed. 39, 119 C.C.A. 371. In that case the railroad company paid the taxes admitted to be due and sued to enjoin the collection of the balance. It was decided on that appeal that a portion of the unpaid balance was valid, and the other part void, and the collection of the latter part was enjoined. The Circuit Court of Appeals refused to enforce the penalty of 18 per cent. provided for by the statute of the state of Wyoming, but gave judgment for interest at 8 per cent. It should suffice to say that there is a broad difference between that case and this. There a portion of the tax was held void; here it was all adjudged valid. That was a proceeding in equity; this is a suit at law. This court, in this case, must follow the statute.

"The judgment is affirmed."

In the above case, *State ex rel. Stone v. Kansas City, Ft. Scott and Memphis Railway Company, et al.*, the Court, in the syllabus of its opinion, passed on Section 11459, Revised Statutes Missouri 1909. This section of 1909 is identical with Section 12905, Revised Statutes 1919, and Section 9913, Revised Statutes 1929. The county collector, although his office was created by the Legislature and not the Constitution, is bound by Article X, Section 3, of the Constitution of the State of Missouri, which is as follows:

"Taxes may be levied and collected for public purposes only. They

shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

In the case of *Walden v. Dudley*, 49 Mo. 419, the Court held:

"A county collector is not personally liable for levying on land embraced within town limits and regularly assessed for town taxes, although the lands were used exclusively for agricultural purposes. It is his duty to collect all taxes contained in the assessor's list; and he has no discretion in the matter, except where property is expressly exempt by law, and the assessment is simply void."

Section 9913, Revised Statutes Missouri 1929, should not be construed to mean that the taxpayer can pay a part of the taxes on one piece of property, but can pay on certain tracts or lots or upon different items at different places and refuse to pay on either of the other lots or tracts providing they are specifically described.

This section has been construed in *State v. Harnsberger*, 14 S. W. (2d) 554, and by construing *State v. Harnsberger* with *State ex rel. Stone v. Kansas City, Ft. Scott and Memphis Railway Company*, 178 S. W. 444, the distinction can readily be seen.

Under the above authorities cited and rulings set out, they refer mostly to school district taxes. Under Section 12, page 334, of the 1935 session acts, the legislature provided, "the clerk of the county court or respective clerks of the county courts shall

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enter such levies on the tax books of the county in the same manner as school district taxes are entered, for the use of the county collector."

CONCLUSION.

Under all of the authorities set out above, and especially under the decision of State v. Kansas City, Ft. Scott and Memphis Railway Company, it is the opinion of this office that the county collector is not required to or cannot be compelled to accept payment of other items in the tax bill when the district water tax payment is refused, and he can insist that all of the items embraced in the 1937 taxes be paid at one time.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

Approved

J. E. TAYLOR
(Acting) Attorney General

WJB LC