

TAXATION AND
REVENUE:

Clerk of city of the third class cannot legally collect county taxes. He has no duty to keep a record of the collection of such county taxes.

October 26, 1938

Mr. George E. Waite
City Collector
Webster Groves, Missouri

Dear Mr. Waite:

We desire to acknowledge your request for an opinion on October 20th, which is as follows:

"We have a request from a party who purchased a few pieces of property at our tax sale held November 1st, 1937 on 1932 Real Estate Taxes to post the County Tax payments which he makes on property held under a City Tax Sale certificate and not allow that certificate to be redeemed without the payment of the County Taxes which he has advanced.

"We would appreciate a ruling from you as to the legality or advisability of my office to collect County Taxes and to save at least a year's taxes for the purchaser of one of our certificates.

"I understand also that this same party has requested the County Collector to post the City Tax payments which he makes on property held under a County Tax sale certificate and not allow that certificate to be redeemed without the payment of City Taxes which he has advanced.



"I see several angles and also some very vital points to guide future purchasers of Real Estate property under the Jones-Munger sale as quite a difficulty would arise if the Collector would give a collector's deed to one individual and I as Collector of Webster Groves would give a Collector's deed to another.

"Before answering this party I would greatly appreciate a ruling from your office."

In the second paragraph of your letter you state:

"We would appreciate a ruling from you as to the legality or advisability of my office to collect County Taxes and to save at least a year's taxes for the purchaser of one of our certificates."

An opinion was rendered by this department to the State Tax Commission outlining the powers and duties of cities of the third class as to the collection of taxes after the passage of Senate Bill No. 94 of the 1933 Session Acts of Missouri, which held that collectors in cities of the third class were to collect city taxes under and by virtue of the procedure provided in said Senate Bill No. 94, supra. A copy of said opinion, relating to cities of the third class, is enclosed herein.

In establishing a rule of construction for tax statutes, the Supreme Court of Missouri, en Banc, in State vs. Markway, 110 S. W. (2nd) 1118, l. c. 1119, said:

"The power to levy and collect taxes

is purely statutory, and has been confided to the Legislature and not the courts.' State ex rel. Parish v. Young, 327 Mo. 909, loc. cit. 915, 38 S. W. 2d 1021, 1023. 'It is well established that the right of the taxing authority to levy a particular tax must be clearly authorized by the statute, and that all such laws are to be construed strictly against such taxing authority.' State ex rel. Ford Motor Co. v. Gehner, 325 Mo. 24, loc. cit. 29, 27 S. W. 2d 1, 3."

The court in the case of Chillicothe ex rel. vs. Henry, 136 Mo. App. 468 l. c. 474, in establishing a rule as to the powers of a municipal corporation, in a matter of taxation, said:

" * * * in deciding any question whether certain power or authority has been given to a municipality, every doubt must be resolved against the power and in favor of the citizen. (St. Louis v. Telephone Co., 96 Mo. 1. c. 628; St. Louis v. Kaime, 180 Mo. 309, 322.) And such argument is also met by that other rule of interpretation of such statutes, which is that municipal corporations can exercise only such powers as are granted in express words or are necessarily fairly implied in or incident to such as are expressly granted. (City ex rel. v. Eddy, 123 Mo. 1. c. 557.)"

We have not been able to find any statute giving to a collector of a city of the third class the right

Mr. George E. Waite

-4-

October 26, 1938

to collect county taxes nor any statute making it mandatory for such city clerk to keep a record of such county payments.

CONCLUSION

Therefore, it is the opinion of this department that a city clerk of a city of the third class cannot legally collect county taxes and that he has no duty of keeping a record as to the collection of such county taxes.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney-General

SVM:LB