

COUNTY COLLECTOR: Shall collect drainage district taxes.

July 12, 1943



Mr. George O. Dalton, Collector
Marion County
Hannibal, Missouri

Filed #21

Dear Mr. Dalton:

This will acknowledge receipt of your letter of recent date wherein you wish to be advised as to the proper person to collect drainage district tax. The full text of your letter is as follows:

"I understand that as County Collector I am the designated one under the Statutes to collect Drainage Taxes.

"A local attorney, who acts for and in behalf of the Drainage District here, insists on collecting these taxes even after the Drainage District Tax Book is placed in my hands to collect the charges thereon.

"Will you please advise what recourse that I have under the Law to prevent him from doing the collecting, and how I may recover the commission due me on the collections that he has made?

"Will you also please advise me what commission the Collector would be allowed under Section 12346 Revised Statutes of Missouri, 1939?

"Since a question of Law is involved, I am hoping that you will render your opinion in this matter at your earliest convenience."

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Your letter does not state whether the drainage district in your county, the one under discussion, was organized under the circuit court of the county court. Neither does your letter inform us whether or not your county is organized under township bases. It will be necessary to point out the situation with two sets of possible organization forms and with two different tax collection agencies in mind.

The statutes of our state provide that a drainage district may be organized under the county court or it may secure authority for organization from the circuit court. At Chapter 79, Article 3, Sections 12398-12454 R. S. Mo., 1939, we find in detail the steps required for organization of drainage districts. We do not quote these statutes because of their great length, but merely cite same for your information and guidance.

Concerning ourselves with the matter of collection of taxes in drainage districts we find that Section 12416 R. S. Mo., 1939, provides that the county collector collect taxes. The full text of this section is as follows:

"It shall be the duty of the collector of revenue of each county in which lands or other property of any drainage district organized under this article are situate, to receive the 'drainage tax book' each year and he is hereby empowered and it shall be his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing. He is further directed and ordered to demand and collect such taxes at the same time that he demands and collects state and county taxes due on the same lands and other properties. Where any tract

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or part thereof has been divided and sold or transferred, the collector shall receive taxes on any part of any tract, piece or parcel of land or other property, charged with such taxes and give his receipt accordingly. The 'drainage tax book' shall be the warrant and authority of the collector for making such demand and collection. The said collector shall pay over and account for all moneys collected thereon each year to the county treasurer at the time he pays over state and county taxes. The collector shall give bond payable to the drainage district for the probable amount of all drainage taxes to be collected in any one year conditioned for the faithful performance of all his duties in accordance with this article. Said bond shall be signed by at least two resident freeholders in the county or by a surety company authorized to transact business in the state. The bond shall be approved by the court and the premium, if any, may be paid out of any funds belonging to the district."

Looking to the decisions in the state as they apply to drainage districts, we find that they are public corporations, being political subdivisions of the state, exercising governmental functions, and not private corporations; and when so organized the county court administers their entire affairs. We further find that since it is a public corporation it is a creation of the statute and only those powers enumerated in the statute are conferred upon the corporation. In other words, it is strictly limited in its acts to those powers specifically stated in our statutes. Authority for this may be found in State ex rel.

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Applegate v. Taylor, 123 S. W. 892, Squaw Creek Drainage District v. Turney, 138 S. W. 12, Houck v. Little River Drainage District, 154 S. W. 739, State ex rel. Manion v. Albany Drainage District, 234 S. W. 339, Wilson v. King's Lake Drainage District, 158 S. W. 931, and Granes v. Little Tarkio Drainage District, 134 S. W. 2d 70.

Looking now to drainage district levees and water supplies, we find in Article 1, Chapter 79, Sections 12324-12389 R. S. Mo., 1939, inclusive, the statutory articles on drainage districts incorporated in circuit courts of the state. In these sections the entire machinery of the districts is outlined and the powers and functions of drainage district officers are set out in great detail. The board of supervisors is provided for, and their particular duties and powers clearly and carefully defined. Under the terms and provisions of the statutes the board of directors is given no right or authority to appoint collectors of revenue for the purpose of tax collection. The only appointments which may be made by the board are outlined in Section 12331 R. S. Mo., 1939, and we do not find in this section any authority to appoint a collector of revenue.

We do find, at Section 12342¹⁴ R. S. Mo., 1939, the authority for the collector of revenue to collect drainage tax:

"It shall be the duty of the collector of revenue of each county in which lands or other property of any drainage district organized under this article are situate to receive the 'drainage tax book' each year, and he is hereby empowered and it shall be his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing. He is further

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directed and ordered to demand and collect such taxes at the same time that he demands and collects state and county taxes due on the same lands and other properties. Where any tract or part thereof has been divided and sold or transferred, the collector shall receive taxes on any part of any tract, piece or parcel of land or other property, charged with such taxes and give his receipt accordingly. The above and foregoing 'drainage tax book' shall be the warrant and authority of the collector for making such demand and collection. The said collector shall make due return of all 'drainage tax books' each year to the secretary of the board of supervisors of the aforesaid drainage district, and shall pay over and account for all moneys collected thereon each year to the treasurer of said district at the same time when he pays over state and county taxes. Said collector shall in said 'drainage tax book,' verify by affidavit his said return. The said secretary shall each year, within ten days after the return of said collector is delivered to him, prepare and certify to said collector a 'drainage back tax book' containing the list of lands and other property so returned by said collector as delinquent, deliver the same to him and take his receipt therefor, and said collector shall proceed to collect such delinquent drainage taxes and demand payment therefor in the same manner as herein provided for the collection of current drainage taxes. Before re-

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ceiving the aforesaid 'drainage tax book' the collector of each county in which lands or other property of the drainage district are located shall execute to the board of supervisors of the district a bond with at least two good and sufficient sureties in a sum that is equal to the probable amount of any annual installment of said tax to be collected by him during any one year, conditioned that said collector shall pay over and account for all taxes so collected by him according to law. Said bond after approval by said board of supervisors shall be deposited with the secretary of the board of supervisors, who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested to do."

In counties where a township organization plan has been adopted we find that drainage district tax as taxes may be collected either by the county collector or the township collector depending upon which organization obtains in the particular county.

From our reading of the statutes and decisions, we find that the board of directors in the drainage district have nothing to do with tax collection, and this is sustained in an early case in the state, Drainage District No. 1v. Charles Daudt, 71 Mo. App. 579.

Devoting our thoughts to the matter of the fees allowed collectors we find at Section 12470 the provision as to the amount of fees the collector may charge and we quote this section in full:

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"The county and township collectors for collecting current taxes for drainage and levee districts shall receive one per cent of all such taxes collected, and for the collection of delinquent taxes for such they shall receive two per cent of all sums collected."

You may be under the impression that the same rule as to commission for delinquent tax collection applies to drainage tax laws as to general taxes. This, however, is not true for the drainage tax fees allowed the collector as authorized by Section 12470, supra, which we have just quoted and set out in full, are entirely different from Section 11182 R. S. Mo., 1939, which reads as follows:

"Fees shall be allowed for services rendered under the provisions of this article, as follows: To the collector, except in such cities, two per cent on all sums collected; in such cities, two per cent on all sums collected--such per cent to be taxed as cost and collected from the party redeeming. To the county collector, for recording the list of delinquent land and lots, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

Answering your question as to the proper remedy where an authorized person collects taxes it is well to remember that an appropriate legal remedy will be likely to recover fees in the hands of the unauthorized collector. You are reminded that the county court is an interested party there-to, and we further suggest that your prosecuting attorney should be consulted in this matter.

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CONCLUSION

The county collector shall collect drainage district taxes in counties which have not adopted the township organization plan, and in those counties operating under the township plan the township collector is authorized to collect taxes.

Respectfully submitted,

L. I. MORRIS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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