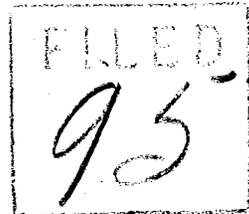


COUNTY COLLECTOR:
TOWNSHIP COLLECTOR:
TAXATION:

In counties under township organization township collector may levy upon property of taxpayer by distraint and sale when taxpayer refuses, upon request, to pay personal taxes. Notice of taxes must be made to taxpayer personally. Goods seized to be sold for taxes may be sold any place collector designates. County treasurer and ex officio collector may proceed by levy, distraint and sale after tax books have come into his hands.

December 29, 1947



Honorable Joe C. Welborn
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, which reads as follows:

"The County Court and the Township Collectors of Stoddard County, have asked me to request an opinion from you on the following matters:

"1. Stoddard County is a county operating under township organization, and has been for some several years. The township collectors now have the tax books for 1947, and are now in the process of collecting taxes. They desire an opinion from you as to when they shall proceed under Section 14010, R. S. Mo., 1939, to levy on the goods and sell the same for delinquent personal taxes. This section says that they shall levy the same by distraint and sale, upon the refusal or neglect of a taxpayer to pay the tax, and apparently means that if a taxpayer refuses on the first request to pay, his goods may be seized.

"2. Can the township collector proceed under 14010, after leaving written notice as provided in section 11086, in the article applicable to counties without township organization?

"3. The third question is, where should the goods be sold? Can the collector assemble

the goods at any place in the township and sell them there?

"4. When may the County Collector, in counties under township organization proceed by levy, distraint and sale?"

Section 14010, R. S. Mo. 1939, provides as follows:

"In case any person shall refuse or neglect to pay the tax imposed, the collector shall levy the same by distraint and sale of the goods and chattels of the person who ought to pay the same."

From the clear and unambiguous words of the statute, the township collector is given the power to levy by distraint and sale of the goods and chattels of a person who refuses to pay his taxes after personal demand.

The demand for payment of taxes necessary before the levy by distraint and sale of the goods of the person refusing to pay the taxes must be made in the manner set out in Section 14009, R. S. Mo. 1939, that is, by personal demand upon the person taxed.

The Springfield Court of Appeals, in construing what is now Section 11086, R. S. Mo. 1939, held in the case of National Lumber & Creosoting Co. v. Burrows, 284 S. W. 153, that the demand for taxes, before levy by distraint and sale of goods is made, must be made only as provided in the statute. The court said, l. c. 154:

"The levying of taxes is a matter solely of statutory creation and no means can be employed to coerce payment other than those pointed out in the statute. City of Carondelet v. Picot, 38 Mo. 125. By section 12932, R. S. 1919, personal taxes constitute a debt, and under that section and the attachment law defendant had ample remedy to enforce collection of the taxes he sought to collect without resorting to summary seizure: also under section 12932 it is provided that the collector shall in no case be liable for costs.

"The demand required by section 12907 can only be made in the manner prescribed, and the difficulty or impossibility of making the

demand cannot justify a reading of something into the statute that would run counter to sound reason. We are constrained to rule that the demand can be made only as the statute prescribes, and, since demand by mail is not prescribed, such a demand is in effect no demand." (Emphasis ours.)

Therefore, the township collector cannot proceed by seizure and sale of the goods and chattels of the person so taxed, and who refuses to pay, after leaving a written or printed notice at the place of abode of the taxpayer with some member of his family over fifteen years of age, as is provided in Section 11086, R. S. Mo. 1939, but may proceed only after personal demand on the person taxed. We believe this to be obvious under the holding in the National Lumber & Creosoting Company case, above quoted, since the treasurer and ex officio county collector may proceed under Section 11086 or under Section 11112, Laws of Missouri, 1945, page 1848.

Since other remedies are provided than the summary seizure and sale by the township collector, the statute authorizing such seizure and sale, Section 14010, R. S. Mo. 1939, must be strictly construed.

Section 14011, R. S. Mo. 1939, provides as follows:

"The collector shall give public notice of the time and place of sale, and of the property to be sold, at least fifteen days previous to the sale, by advertisement to be posted up in at least three public places in the township where such sale is to be made. The sale shall be by public auction."

Under the provisions of such section, the sale may be held at any place the township collector desires, so long as notice is given of the place at which such sale is to be held.

While the duty is placed upon the township collector by Section 14000, R. S. Mo. 1939, to exhaust all remedies required by law for the collection of taxes, still the county collector may levy by distraint and sale of the goods and chattels of the person taxed, when the person so taxed refuses to pay, after the tax books come into the ex officio collector's hands, since Section 11086, R. S. Mo. 1939, provides, in part, as follows:

" * * * Such seizure may be made at any time after the first day of October, and before

said taxes become delinquent, or after they become delinquent: * * *"

Since both current and delinquent taxes may be collected by such seizure and sale, the county treasurer and ex officio collector may proceed by this method after the tax books have been delivered to him and such taxes are delinquent.

It is clear from that part of Section 11086 reading:

" * * * Provided further, that when any person owing personal tax removes from one county in this state to another, it shall be the duty of the county collector (or township collector as the case may be) of the county from which such person shall move, to send a tax bill to the sheriff of the county into which such person may be found, and on receipt of the same by said sheriff, it shall be his duty to proceed to collect said tax bill in like manner as provided by law for the collection of personal tax, for which he shall be allowed the same compensation as provided by law in the collection of executions. It shall be the duty of the sheriff in such case to make due return to the collector of the county from whence said tax bill was issued, with the money collected thereon."

that the procedure in collecting such taxes should be followed by the township collector after the tax books are in his hands, and should be followed by the county treasurer and ex officio collector after the tax books are in his hands. When the township collector has made a personal demand for the taxes and the taxes have not been paid, the ex officio county collector may proceed to levy by distraint and sale after the tax books have come into his hands, since actual demand has been made for the taxes, but if the township collector has not made personal demand for the taxes, the ex officio county collector must make demand for the taxes as provided in Section 11086, that is, he must make the demand in person or by deputy, or by leaving a written or printed notice at the taxpayer's abode with a person over the age of fifteen years.

We are enclosing a copy of an official opinion rendered by this department under date of October 28, 1947, to Robert C. Frith, setting out the proper time for the turning over of the tax books by the township collectors in counties under township organization.

CONCLUSION

(1) The township collector may levy by distraint and sale for personal taxes if a person refuses to pay such taxes after personal demand by the township collector.

(2) The township collector must make personal demand for the taxes before such levy can be made, and the leaving of a written notice at the place of abode of the person taxed with a member of his family over fifteen years of age is not such demand as is required of the township collector.

(3) The goods and chattels seized may be sold at any place designated by the township collector in his notice of such sale.

(4) The county treasurer and ex officio collector in counties under township organization may proceed by levy, distraint and sale after the tax books are in his hands.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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