

MUNICIPALITIES: City of fourth class not required to certify delinquent tax lists to county collector under Sec. 140.670, RSMo 1949, and county clerk not required under Sections 140.060 and 140.070, RSMo 1949, to prepare back tax book for fourth class city.

September 24, 1952

FILED

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Honorable John R. Caslavka
Prosecuting Attorney
Dade County
Greenfield, Missouri



Dear Mr. Caslavka:

The following opinion is rendered in reply to your inquiry reading as follows:

"A question has arisen in Dade County Missouri concerning the purpose of Back Taxes Books for the entry of delinquent taxes of fourth class cities in this state."

"As I interpret the law, and all of these citations are to the revised statutes of Missouri 1949, Section 140.670 authorizes the collectors of all cities and incorporated towns of this county to return to the County Collector a list of the lands on which taxes are due and unpaid and Section 140.680 gives the power of collection to the County Collector.

"Sections 140.060, 140.070 and 140.090 states that the County Clerk is to file delinquent list in his office and enter them in the Back Taxes Book. The question then arises;

"1. Is the duty of the county in which said city is located to purchase a Back Tax Book for the use of these cities?

"2. If it is the duty of the County Court to purchase this book, can they be compelled to do so?"

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In the above quoted request for an opinion you have referred to Sections 140.670 and 140.680, RSMo 1949, as authorizing a city collector in a city of the fourth class in Missouri to return to the county collector a list of lands and lots on which the taxes or special assessments levied by such city remain due and unpaid, so that the county collector may proceed to collect said taxes. In the case of State ex rel. Steed v. Nolte, 138 S.W. (2d) 1016, 345 Mo. 1103, decided by the Supreme Court in 1940, the Court was construing Sections 9970 and 9971, RSMo 1929 (Sections 140.670 and 140.680 RSMo 1949) and Section 6995, RSMo 1929 (Section 94.310 RSMo 1949), and spoke as follows at 345 Mo. 1.c. 1107, 1108:

"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, Revised Statutes 1929 (Mo. Stat. Ann., 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 1871-2, 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, p. 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

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

Under the ruling in State ex rel. Steed v. Nolte, cited, supra, we must conclude that in a city of the fourth class in Missouri, the city collector, not the county collector, is the proper officer to collect taxes due such city. Having this authority to collect its own taxes, a city of the fourth class is not subject to Section 140.670, RSMo 1949, which provides for certification of delinquent land lists to the county collector, and the county clerk has no occasion to make a back tax book for a city of the fourth class. Sections 94.320 and 94.330,

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RSMo 1949, particularly applicable to fourth class cities, provide as follows:

"Section 94.320. Collector to make delinquent lists--board of approve--collection of delinquent taxes.--1. The board of aldermen shall require the collector, at the first meeting of the board in April of each year, or as soon thereafter as may be, to make out, under oath, lists of delinquent taxes remaining due and uncollected for each year, to be known as 'the land and lot delinquent list' and 'the personal delinquent list.'

"2. The board of aldermen, at the meeting at which the delinquent lists are returned or as soon as may be thereafter, shall examine the lists carefully, and if it appear that all property and taxes contained in the lists are properly returned as delinquent, the board shall approve the lists, enter a record thereof in the journal and credit the amount thereof to the account of the city collector.

"3. The board shall return the delinquent lists to the collector, charging him therewith, and he shall proceed to collect the same in the same manner as provided by law for state and county taxes.

"Section 94.330. Collector to report monthly to board.--The city collector shall report to the board of aldermen, at the regular meetings in each month, all taxes collected on the real and personal delinquent lists; and he shall pay the same into the city treasury, and shall receive credit therefor. He shall turn over to his successor in office all uncollected delinquent lists, receiving credit therefor, and his successor shall be charged therewith; provided, that the board of aldermen may declare worthless any and all personal delinquent taxes which they may deem uncollectible."

The two statutes quoted above disclose that no back tax book is furnished to the city collector of a fourth class city by a county clerk, but that only delinquent lists are made by the city collector and from such lists he proceeds to make collections as provided by law.

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CONCLUSION

It is the opinion of this office that Section 140.670, RSMo, 1949, is not applicable to cities of the fourth class and such cities are not required to return delinquent tax lists to county collectors so as to require such delinquent taxes to be extended in the county back tax book to be prepared by the county clerk under the provisions of Sections 140.060 and 140.070, RSMo, 1949.

Respectfully submitted,

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APPROVED:



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