

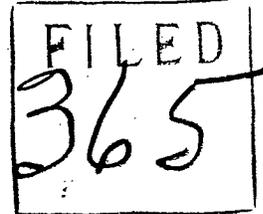
HOSPITAL DISTRICT:
COUNTY COLLECTOR:
TAX FUNDS:

County Collector may turn over tax funds collected for hospital districts to the hospital district.

December 7, 1964

OPINION NO. 365

Honorable Clarence P. Lehnen
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri



Dear Mr. Lehnen:

This is in answer to your official opinion request of October 21, 1964, in which you asked the following question:

- "1. Chapter 206 provided for the creation of hospital districts; the election of a Board of Directors of said districts, the legislative and executive powers of said Board of Directors; and election of a chairman of said Board of Directors; and for the appointment of a Secretary and Treasurer of said Board.
- "2. There are provisions for financing said Districts by tax moneys and other provisions dealing with said hospital districts.
- "3. I am unable to find any provision in said Chapter or related chapters in regard to the handling of the moneys collected for said hospital districts."

In a subsequent communication with this office, you have further stated that the county collector has collected a hospital district tax for a hospital district located in the county of which he is collector as authorized by Chapter 206, RSMo Cum. Supp. 1963, and is holding these funds in a special account for a determination of whether he should turn over said funds to the county treasurer or directly to the hospital district. Chapter 206 makes no provision for the procedure which the county collector is to follow.

Your attention is called to Section 206.010 (2), Cum. Supp. 1963, which authorizes a hospital district to levy and collect taxes and which provides:

"2. When a hospital district is organized it shall be a body corporate and political subdivision of the state and shall be known as '_____ Hospital District', and in that name may sue and be sued, levy and collect taxes within the limitations of this chapter and the constitution and issue bonds as herein provided."

However, we note that Chapter 206 relating to hospital districts is devoid of a provision concerning what officer the county collector is to turn over the hospital district tax. Therefore, we shall limit this opinion to answering the question of what is the proper official for the county collector to turn over collected tax funds.

It is a general rule of construction that omissions in a statute cannot be supplied by construction. However, the general rule is qualified by another rule which provides that when a power is given by statute (power to levy and collect taxes), everything necessary to make it effectual or requisite to obtain the end is necessarily implied.

It is the opinion of this office that the latter rule should be applied in this situation.

In the case of *ex parte Sanford*, 236 Mo. 665, 139 SW 376 (7), the statute expressly granted the Tax Equalization Board the power to subpoena witnesses and send for books and papers. It was conceded that the statute did not authorize the board to cite witnesses for contempt. However, the Supreme Court held that the Tax Equalization Board had power to cite witnesses for contempt by implication in the following words:

"[7] (c) There is a familiar rule of statutory construction which fits this case like a glove fits the hand, namely, that, when a power is given by statute, everything necessary to make it effectual or requisite to attain the end is necessarily implied. . . It is also a well-settled rule of construction that, where a statute contains grants of power, it is to be construed so as to include the authority to do all things necessary to accomplish the object of the grant. . . . The latter case is very much like the one at bar.

"If we apply this rule to the act under consideration, then there can be no reasonable doubt but what the Legislature intended to and did confer upon the board of equalization

the power to commit witnesses for contempt, where they were duly subpoenaed, and refused to testify or produce the books and papers called for by the subpoena. * * *

In *Reilly et al. v. Sugar Creek Tp. of Harrison County*, 139 SW2d 525, the power of the township to purchase right-of-way with funds raised by a bond issue under 1929 Mo. St. Ann., Section 79-63 was questioned. Although the statute authorized the distribution of proceeds from the bonds sale in paying the cost of "construction for improving roads", it did not expressly authorize the purchase of right-of-way.

" * * * 'The rule for interpreting statutes, that a power given carries with it, incidentally or by implication, powers not expressed, but necessary to render effective the one that is expressed, would require the construction that authority to incur a debt for the erection of a public building impliedly embraces authority to buy a site for it; and this for the plain reason that without a site the building cannot be erected.' That rule is applicable to the present situation. * * *"

Certainly, the Legislature did not intend that Section 206.010 (2) and 206.060 be ineffectual simply because this Chapter 206 does not specify what official the county collector is to turn over the said tax funds. Thus, it is the opinion of this office that the omission of statutory procedure for turning over tax funds levied under Section 206.010 (2) and 206.060, supra, does not prohibit the county collector from turning over the tax funds collected to the appropriate public officer. Certainly when the Legislature gave the power to levy and collect a hospital district tax by Section 206.010 (2), Cum. Supp. 1963, it also by implication gave the power necessary to make the tax effectual.

We find no statutes which deal with the method by which money received from the hospital district tax is to find its way to the treasurer of the hospital district. Section 206.100, RSMo Cum. Supp. 1963, however, authorizes the board to select a treasurer. Some argument could be made to the effect that the money from said tax should be paid by the county collector to the county treasurer, and thereafter paid by the county treasurer to the treasurer of hospital district. If this procedure were followed, the money could be paid by the county treasurer to the hospital district treasurer only upon order of the county court. The control and expenditure of such funds, however, are not subject

to any discretion by the county court. Based upon the principles above mentioned, it would seem appropriate that the county collector pay such funds directly to the hospital district treasurer and accept the district's receipt therefor. This method of handling the money is consistent with legislative policy adopted in analogous situations. Section 199.150 RSMo 1959--Tuberculosis Districts; Section 235.190 RSMo 1959--Street Light Maintenance Districts; Section 247.500 RSMo 1959--Water Supply Districts; Section 321.270 RSMo 1959--Fire Protection Districts.

CONCLUSION

It is the opinion of this office that the county collector shall turn over tax funds collected for hospital districts as authorized by Section 206.010, RSMo Cum. Supp. 1963, to the hospital district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jim DeNeen.

Yours very truly,


THOMAS F. EAGLETON
Attorney General