

Attorney General of Missouri

JEFFERSON CITY

65101

July 8, 1977

JOHN ASHCROFT
ATTORNEY GENERAL

(314) 751-3321

OPINION LETTER NO. 150

Mr. James R. Hall
Prosecuting Attorney
Ripley County Court House
Doniphan, Missouri 63935

Dear Mr. Hall:

This letter is in response to your question asking whether it is the duty of the prosecuting attorney in a county of the third class to represent the county collector in a suit for a refund of taxes brought under Section 139.031, RSMo Supp. 1975. You state that the question concerns an interpretation of provisions of Section 137.073, RSMo.

In answer to your question we are including the opinions listed below which we believe will be helpful to you. We are of the view in considering these opinions and the authorities cited that since the county collector is a county officer acting in the performance of his official duties in collecting taxes pursuant to the provisions of Chapter 137, RSMo, it is your official duty to defend the suit involved. This situation is somewhat similar to that in the case of Missouri Pacific Railroad Co. v. Kuehle, 482 S.W.2d 505 (Mo. 1972), in which the prosecuting attorney of Cape Girardeau County represented the collector in a suit against him for refund of alleged excess school tax payments. The school districts were also represented in that case by private counsel.

Mr. James R. Hall

You additionally ask whether the prosecuting attorney has authority to compromise the suit. The enclosed opinions indicate that the prosecuting attorney, acting as a lawyer in the interest of the state and the county under Chapter 56, RSMo has not been given express authority to compromise such litigation. It is also our view in response to this second question that since it involves litigation it would be improper for this office to descend into details as to the manner in which the litigation should be handled.

Very truly yours,



JOHN ASHCROFT
Attorney General

Enclosures: Op. No. 70, 9/14/49, Peal
Op. No. 96, 11/29/49, Wheeler
Op. No. 92, 3/5/53, Vogel
Op. No. 62, 1/11/54, Mills
Op. No. 62, 9/14/54, Jennings
Op. No. 89, 11/14/61, Toohey
Op. No. 93, 2/20/70, Crow