

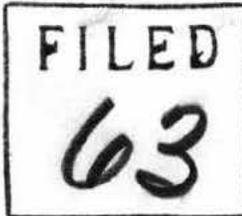
PROSECUTING ATTORNEY :

Duty of Prosecuting Attorney to sue defaulting township collector.

TOWNSHIPS:

COLLECTOR:

TAXES:



April 17, 1952

6-8-52

Honorable Elvis A. Mooney  
Prosecuting Attorney  
Bloomfield, Missouri

Dear Sir:

This is in reply to your request for an opinion which is as follows:

"Stoddard County is operating under the township form of county government; township organization has been in effect in Stoddard County for approximately 40 years. Also Stoddard County is a third class county.

"On the third day of March, 1952, a representative of the State Auditor's Office filed the audit of the county with the Clerk of the County Court and on the same day reviewed the findings of the auditors as shown therein.

"The findings of the auditors revealed that William Young, the ex-collector of Liberty Township, had failed to turn over funds collected for the State, the County, Road and Bridge, Special Road District, and various school districts (rural and consolidated) in Liberty Township. Apparently it will be necessary to bring actions for the recovery of these funds.

"The office of the State Auditor called my attention to the copy of a letter by

the Hon. Tyre W. Burton, Assistant Attorney General, on January 24, 1939, addressed to Mr. Frank Huffhines, Prosecuting Attorney, Stone County, Galena, Missouri, wherein an opinion rendered by Mr. Burton on December 21, 1938, is referred to. This letter indicates that it is not my duty, as prosecuting attorney of Stoddard County, to bring an action for the recovery of money due and unpaid, by Mr. Young, to the various school districts; but that it is my duty to bring an action for the recovery of money due and unpaid to the State and the County.

"Will you please furnish me an opinion as to my duties relative to bringing suits for the collection of funds due and unpaid those political sub divisions other than the state and county, particularly funds due the various school districts, the township and the special road district."

At the outset, we desire to call attention to the opinion (Huffhines - 1939) mentioned in your letter, with regard to the question as to whether or not the prosecuting attorney is authorized to represent a school district in an action to recover moneys from a county treasurer. The conclusion in this opinion, that it was not the official duty of the prosecuting attorney to render services to school districts and represent them in litigation, was based primarily upon the fact that there was no statute providing for such representation. In the particular instance before us, and for the reasons set out hereafter, we believe that it is the duty of the prosecuting attorney to bring suit against a township collector who is in default. We believe the following statutes are applicable to the present situation and, therefore, set them out as follow:

"139.420. Township collector --final settlement of accounts.--1. The township collector of each township, at the term of the county court to be held on the first Monday in March

of each year, shall make a final settlement of his accounts with the county court for state, county, school and township taxes; produce receipts from the proper officers for all school and township taxes collected by him, less his commission; pay over to the county treasurer and ex officio collector all moneys remaining in his hands, collected by him on state and county taxes; make his return of all delinquent or unpaid taxes, as required by law, and make oath before the court that he has exhausted all the remedies required by law for the collection of such taxes.

"2. On or before the twentieth day of March in each year, he shall make a final settlement with the township board.

"3. If any township collector shall fail or refuse to make the settlement required by this section, or shall fail or refuse to pay over the state and county taxes, as provided in this section, the county court shall attach him until he shall make such settlement of his accounts or pay over the money found due from him; and the court shall cause the clerk thereof to notify the director of revenue and the prosecuting attorney of the county at once of the failure of such township collector to settle his accounts, or pay over the money found due from him, and the director of revenue and the prosecuting attorney shall proceed against such collector in the manner provided in section 139.440, and such collector shall be liable to the penalties provided in section 139.440."

"139.430. Township collector--monthly statements -- disposition of collected moneys-- commission.-- 1. The township collector, on or before the fifth day of each month, shall make and file in the office of the county clerk a statement showing the amount of taxes collected by him for all purposes during the preceding month, which statement shall be sworn to by such township collector before the county clerk, or some other officer authorized to administer oaths.

"2. On or before the tenth day in each month, the township collector, after deducting his commissions, shall pay over to the county treasurer and ex officio collector all state and county taxes collected by him during the preceding month, as shown by the statement required by this section, and take duplicate receipts therefor, one of which he shall retain and the other he shall file with the county clerk; and the county clerk shall charge the treasurer with the amounts so receipted for, to be accounted for at the annual settlement.

"3. The township collector, in like manner, on or before the twentieth day of each month, shall pay over to the township trustee and ex officio treasurer after deducting his commission all township taxes and funds of every kind belonging to the township, collected by him during the preceding month, and take duplicate receipts therefor, one of which he shall retain and the other he shall deposit with the township clerk, who shall charge the township trustee and ex officio treasurer with the amount so receipted.

"4. The township collector shall receive a commission of two and one-half per cent on the first forty thousand dollars collected; one per cent on the next forty thousand dollars collected; and three-fourths of one per cent on the remainder of all moneys collected by him."

"139.440. Township collector--default, penalties; certified copy of statement.--1. If any township collector shall fail or refuse to file the statement required by section 139.430, or, having filed such statement, shall neglect or refuse to pay over to the county treasurer and ex officio collector the state and county taxes collected by him during the preceding month, as shown by such statement, the county clerk, immediately after such default, and not later than the fifteenth day of the month in which such statement was or should have been made, shall

certify such fact to the director of revenue and the prosecuting attorney of the county; and the director of revenue and the prosecuting attorney shall proceed against such defaulting township collector in the same manner as is provided by section 139.270 for proceeding against defaulting county collectors and ex officio county collectors, and the township collector shall forfeit his commission on all moneys collected and wrongfully withheld, and otherwise be liable to all the penalties imposed by section 139.270.

"2. The county clerk shall certify a copy of such monthly statement to the director of revenue within the time prescribed for certifying the statements of the county collectors and ex officio collectors."

"139.270. Refusal to pay--forfeiture--distress warrant.--1. If any county collector, or ex officio county collector, fails or refuses to pay the taxes and license fees into the county treasuries and to the director of revenue as provided in section 139.210, he shall forfeit his commissions on the amount wrongfully withheld and in addition shall pay a penalty of ten per cent of the amount wrongfully withheld.

"2. The director of revenue within thirty days shall issue a distress warrant for such state taxes and penalties, and the prosecuting attorney within thirty days shall proceed to collect the county, school, road and municipal taxes by suit on the official bond of the defaulting collector."

(RSMo 1949)

Under the above statutes we see that it is the duty of the township collector to make a final settlement of his accounts with the county court for state, county, school and township taxes; producing receipts from the proper officers for school and township taxes collected by him, and pay to the county treasurer all moneys collected on state and county taxes. We note that upon a failure to make such a settlement or to pay over money found due from him, it becomes the duty of the county clerk to notify the Director of Revenue and the prosecuting attorney of the failure to collect the accounts and to make the payments. The method for proceeding against a township collector in default is the same as provided for a defaulting county collector, and we note that that section provides that a prosecuting attorney shall proceed to collect the county, school, road and municipal taxes by suit on the official bond of the defaulting collector.

Reading the above statutory provisions together we believe it was the intent of the Legislature that the prosecuting attorney should proceed against the township collector for all the taxes for which the township collector is in default.

Under the provisions of Section 139.270, RSMo 1949, this is accomplished by a suit on the official bond of the defaulting collector. Provision for a bond for a township collector is found in Section 65.460, RSMo 1949: " \* \* \* The conditions of such bond shall be that he, the said collector, will faithfully and punctually collect and pay over all state, county, township and other revenue, including school taxes, that may become due and collectable during the period for which such collector shall be elected or appointed; \* \* \* ."

#### CONCLUSION.

Therefore, it is the opinion of this department that it is the duty of the prosecuting attorney to bring suit against a defaulting township collector for not only the state and county taxes but also the road and school taxes which have become due and collectable.

Respectfully submitted,

APPROVED:

JOHN R. BATY  
Assistant Attorney General

  
J. E. TAYLOR  
Attorney General

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