



STATE OF KANSAS

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July 15, 1980

ATTORNEY GENERAL OPINION NO. 80-151

Jay W. Vander Velde
Lyon County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Taxation--Collection and Cancellation of Taxes--
Collection of Personal Property Tax Warrant Judgments

Synopsis: It is the duty of the county treasurer, as collector of taxes, to receive and receipt for all tenders of payment for delinquent personal property taxes, including those which have been reduced to judgment under the provisions of K.S.A. 1979 Supp. 79-2017 and 79-2101, as amended by L. 1980, ch. 308, §§5 and 6, respectively. Cited herein: K.S.A. 19-510a, 19-515; K.S.A. 1979 Supp. 28-170; K.S.A. 28-705 (now repealed), 79-2002; K.S.A. 1979 Supp. 79-2004, 79-2004a, 79-2017, 79-2101, as amended by L. 1980, ch. 308, §§2, 3, 5, 6, respectively.

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Dear Mr. Vander Velde:

You ask our opinion on whose duty it is to receive payment of delinquent personal property taxes after said delinquent taxes have been reduced to judgment pursuant to K.S.A. 1979 Supp. 79-2107 or 79-2101, as amended by sections 5 and 6, respectively, of 1980 House Bill No. 2829 (L. 1980, ch. 308, §§5 and 6). Specifically, is such the duty of the county treasurer, or is the clerk of the district court to receive such tenders of payment?

Jay W. Vander Velde
Page Two
July 15, 1980

This question arises from the fact that the clerks of the district court in various counties have assumed this duty. The assumption of this task undoubtedly was prompted by the provisions of K.S.A. 28-705 (now repealed, L. 1972, ch. 153, §58), which provisions were originally enacted in 1953. (See L. 1953, ch. 214, §4.) Said provisions prescribed the salary to be paid the clerk of the district court, the chief deputy, the assistant chief deputy and "additional clerks and deputies, including additional deputies for the purpose of collecting delinquent personal taxes." (Emphasis added.) Although the statute was amended in years following its original enactment, it continued, until its repeal in 1972, to make reference to clerks and deputies needed "to collect delinquent personal property taxes." (See L. 1969, ch. 204, §9.) Through the implication created by this language and the provision of salaries to be paid the assistants needed to collect delinquent personal property taxes, the tradition developed that the clerk of the district court would collect such taxes after they had become a judgment. Said tradition continued after 1972, notwithstanding the repeal of 28-705. However, the question has arisen as to whether this practice should be continued, and, more particularly, if it is required that the clerk of the district court continue to receive payments for delinquent personal property tax judgments.

A careful review of the provisions of K.S.A. 1979 Supp. 79-2017 and 79-2101, as amended, clearly indicates the provisions of neither statute expressly designate who is responsible for receiving payments of delinquent personal property taxes after the same have been entered in the judgment docket of the district court. However, those provisions do not create even an inference that the clerk of the district court is to become the tax collection agent of the county. On the other hand, however, K.S.A. 19-515 expressly provides:

"The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law."
(Emphasis added.)

K.S.A. 19-510a provides:

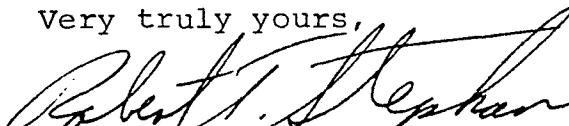
"In all cases when any person shall pay any money into the county treasury he shall take a receipt therefor from the county treasurer."
(Emphasis added.)

Jay W. Vander Velde
Page Three
July 15, 1980

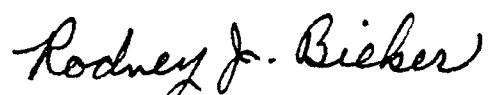
Also, K.S.A. 79-2002, in part, provides: "When the treasurer shall receive any tax he or she shall give a receipt therefor." In addition, the last sentence of both K.S.A. 1979 Supp. 79-2004 and 79-2004a, as amended by Sections 2 and 3, respectively, of 1980 House Bill No. 2829, provide that whenever any interest on delinquent taxes is paid, "the county treasurer shall enter the amount of interest so paid on the tax rolls in the proper column and account for such sum." (Emphasis added.)

These statutory provisions convince us the legislature intended that the duty to receive and receipt for tax payments, regardless of the time at which tender thereof is made, rests with the county treasurer. The only consequence of the delinquent taxes becoming a judgment, from the standpoint of the clerk of the district court, is that, pursuant to K.S.A. 1979 Supp. 28-170(a), said clerk must charge and collect a fee of five dollars for releasing the personal property tax judgment, after the same has been satisfied. The clerk of the district court has no other statutorily imposed duty regarding delinquent personal property taxes. In our judgment, therefore, the clerk of the district court is not required by statute to collect delinquent personal property taxes. That duty is imposed upon the county treasurer--the "collector of taxes." K.S.A. 19-515.

Very truly yours,



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RTS:BJS:RJB:jm