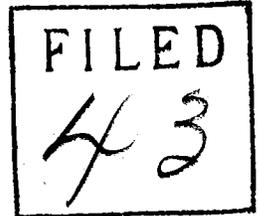


COUNTY TREASURER:  
DRAINAGE AND LEVEE DISTRICT:  
FEES:

Fee and compensation allowed  
treasurer levee district  
organized by county court.

January 23, 1945



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Honorable H. B. Hunt  
Prosecuting Attorney  
Atchison County  
Rock Port, Missouri

Dear Sir:

This will acknowledge receipt of your request for  
an opinion under date of December 28, 1944, which reads:

"We have in Atchison county a levee  
district incorporated by our County  
Court which has long been in existence,  
and is known as Levee District No. 1  
of Atchison county.

"The County Treasurer of this county, as  
Treasurer of said Levee District No. 1, has,  
for many years, received one per cent of  
sums paid out under the authority of what  
is now Section 12471, R. S. Mo. 1939, as  
his compensation for acting as such treasurer.

"A question has arisen as to whether the said  
treasurer's compensation for handling said  
district's funds should be paid according  
to the section above cited, or according to  
Section 12559, R. S. Mo. 1939, which provides  
for compensation of one-half of one per cent  
of all levee funds disbursed by said  
treasurer, the same to be paid out of the  
levee funds."

The writer is unable to find any cases reported  
specifically construing these two statutory provisions, or  
as far as that matter is concerned, construing either of the  
two provisions.

There are two well established rules of statutory construction. First, that the primary rule of construction of statutes is to ascertain and give effect to lawmakers intent and this should be done from words used, if possible, considering the language honestly and faithfully. See *City of St. Louis vs. Senter Commission Co.*, 85 S. W. (2d) 21, 337 Mo. 238. The second rule is that statutes relating to the same subject matter must be construed together and, if possible, give effect to each provision. In *Little River Drainage District vs. Lassiter*, 29 S. W. (2d) 716, 1.c. 718; 325 Mo. 493, the Court said:

"It is the duty of courts in construing two or more statutes relating to the same subject, to read them together and to harmonize them, if possible, and to give force and effect to each." \*\*

The two statutory provisions necessary to consider in rendering this opinion are Sections 12471, R. S. Mo., 1939, and Section 12559, R. S. Mo., 1939. The former provision was enacted in 1913 and is found on page 321, Laws of Missouri, 1913, and in Revised Statutes of Missouri, 1919, known as Section 4576. The latter provision was originally adopted in 1889 and may be found in the Revised Statutes of Missouri, 1889, as Section 6677. Sections 12471 and 12559, R. S. Mo. 1939, are quoted:

"County treasurers for receiving, receipting for, preserving and paying out funds of drainage and levee districts, shall receive one per cent of sums paid out." Sec. 12471, R. S. Mo. 1939.

"The county treasurer of the county in which the greater part of any organized levee district lies shall be the treasurer of the levee fund of the district, until paid out, upon the warrants issued by order of the board of directors of the levee district. Before receiving any funds belonging to the levee district, the treasurer shall give a separate bond, with sufficient security, in double the probable amount of the levee fund that shall come into his hands, payable to the state of Missouri, to be approved by the board of directors, conditioned for the faithful disbursement, according to law, of all such moneys as shall, from time to time, come into his hands to the credit of the levee fund of the levee district of which the county of

which he is treasurer is part; and such bond shall be filed in the office of the clerk of the county court of the county in which said treasurer is appointed or elected. On the forfeiture of such bond, it shall be the duty of the clerk of the county court in whose office said bond is filed to collect the same for the use of the levee district. If such clerk shall neglect or refuse to prosecute, any freeholder of the district may cause prosecution to be instituted. It shall be the duty of the board of directors in no case to permit the county treasurer having the custody of the levee funds of the district to have in his possession at any one time an amount of levee funds over one-half the amount of the security available in the bond. Such treasurer shall be allowed such compensation for his services as the board of directors deem advisable, not to exceed one-half of one per cent of all levee funds disbursed by him, and to be paid out of the levee funds." Sec. 12559, R. S. Mo. 1939.

The significant thing to the writer is that neither of these two provisions have ever been amended in any manner. They are today in their original state; therefore, we cannot benefit much by reviewing the history of these two statutes.

Section 12468, R. S. Mo. 1939, specifically takes services rendered by certain county and township officers in organization of drainage and levee districts out of the regular fee statute and provides that they shall be entitled to receive reasonable compensation as fixed by the courts for services actually rendered, except as is otherwise provided in subsequent sections of the same article.

"Sec. 12468. That it is understood that the ordinary fee statute does not apply to services rendered by any county or township officer or witness in the organization, incorporation, or administration of any drainage or levee districts heretofore organized, in process of organization at the time of passage of this article, or that hereafter may be organized under any general or special law of Missouri permitting the organization of drainage or levee districts, but that such officer or witness, except as is

otherwise provided for in the subsequent sections of this article, shall receive only a reasonable compensation to be fixed by the courts for services actually rendered, that petitioners for formation or incorporation of drainage and levee districts and the officers of such districts after the same have been organized may prepare, write or print all copies of petitions, writs, orders and decrees of courts and other papers pertaining to such districts and furnish the same to the county and circuit clerks or other officers for their use, and in such event such officer shall be entitled to only a reasonable compensation for services actually rendered the districts in issuing such writs and copies of decrees, orders or other papers."

Then following Section 12468, supra, and in the same article will be found Section 12471, supra, which takes precedence over the provisions of Section 12468, supra, and which specifically allows the treasurer a fee amounting to one per cent of all sums paid out.

Section 12559, supra, is found in the article pertaining to levee districts organized by county courts which includes the levee district mentioned herein. This provision provides that the county treasurer shall be treasurer of the levee fund of the district and shall be allowed such compensation for his services as the board of directors deem advisable; however, not to exceed one-half of one per cent of all levee funds disbursed by him and to be paid out of said levee funds.

It was held in Little River Drainage District vs. Lassater, 29 S. W. (2d) 716, l. c. 719, that the duty of the County Collector in collecting drainage and levee taxes is in no way a part of his official duty as the County Collector, but are additional duties.

While, as hereinabove stated, the statutes in question have never been construed as to the fee to be paid the County Treasurer for services rendered, we do find in Little River Drainage District vs. Lassater, supra, wherein the court construed statutes similar to those in question which referred to fees allowed the county collector for services rendered instead of the county treasurer. In that case, the court held that Section 3, page 322, Laws of Missouri, 1913, provided a fee

for the collector and that said fee was applicable to county and circuit court drainage and levee districts alike and did not apply to any single district. The court in that case harmonized the provisions of Section 3, Laws of Missouri, 1913, supra, with similar provisions allowing fees for services rendered for organizing and administering various kinds of drainage and levee districts. The court in so holding said:

"Laws of 1913, p. 321, of which present section 4575 was section 3, was an enactment on a new subject. Other laws passed in 1913 affecting drainage and levee districts dealt with districts organized by circuit courts, and made no general revision of the law relating to drainage and levee districts organized by county courts. There is nothing to indicate that section 3, Laws of 1913, p. 321, was intended to apply to drainage and levee districts organized by county courts and not to apply to circuit court drainage and levee districts. At least it would seem reasonable to suppose, in view of all the circumstances of the revision of 1913, that the General Assembly would have said so explicitly if it intended that what is now section 4575 should apply only to drainage and levee districts organized by county courts.

"In Laws of 1913, p. 321, the General Assembly apparently undertook to enact new legislation concerning fees in the organization and conduct of drainage and levee districts. It sought to authorize county collectors and township collectors in all such districts to receive more than 1 per cent for collecting taxes of such districts under certain circumstances. It would have taken four separate amendments to express such legislative intention in each of the four articles relating to circuit court and county court drainage districts and to circuit court and county court levee districts. It apparently undertook to do it in one general act applicable alike to all such districts."

In view of the decisions rendered in the foregoing case, holding that Section 3, Laws of Missouri, 1913, supra, relative to collectors' fee, applied to all drainage and levee districts, organized both in county and circuit courts, apparently the same is true of Section 4 immediately following

Section 3 and in the same Act which provides for a fee for county treasurer. It likewise applies to drainage and river districts organized in both county and circuit courts. Section 4 was the original enactment of what is now known as Section 12471, R. S. Mo. 1939.

It is impossible to harmonize the provisions of Section 12471, supra, and Section 12559, supra. These two provisions are in direct conflict. Therefore, we must follow another well known rule of statutory construction which was laid down in *State vs. Richman*, 148 S. W. (2d) 796, 1. c. 799, holding that where statutes are in conflict and they cannot be harmonized and where one statute is considered a general act and the other a special act, where the general act is the later enactment, the special act will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication. In so holding, the court said:

"In *State v. Harris*, 337 Mo. 1052, 1058, 87 S. W. (2d) 1026, 1029, we said that if statutes are necessarily inconsistent that which deals with the common subject matter in a minute and particular way will prevail over one of a more general nature; and, citing authorities, we quoted the rule as stated in *State ex rel. County of Buchanan v. Fulks*, 296 Mo. 614, 626, 247 S. W. 129, 132, thus: "Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication. ""

Therefore, following the above rule of statutory construction, Section 12471, supra, being a general act applicable to all drainage and levee districts, and also being the later enactment of the two provisions, we are

Hon. H. B. Hunt

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construing herein, and Section 12559, supra, being a special act enacted long prior to that of Section 12471, supra, it is the opinion of this department that the special act, Section 12559, supra, is controlling as to the amount of fee to be allowed the county treasurer in levee districts organized by the county court as in this instance, and the fee paid the county treasurer for services rendered should be in accordance with said section.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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Harry H. Kay  
(Acting) Attorney-General

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