

COUNTY TREASURERS:

County treasurer may require claimant of fees taxed as criminal costs to make satisfactory proof that such claimant is not indebted to the state or county for any of the items enumerated in Section 550.270, RSMo 1949, before disbursing fees to such claimant.



February 1, 1955

Honorable Noel Cox
State Senate of Missouri
Senate Post Office
Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department based upon the following inquiry:

"Section 550.270 makes it a penalty for the County Treasurer to pay juror or witness fees to anyone having judgments or back taxes against them. I would like to know what the duties of the Circuit Clerk, Clerk of Magistrate Court and the Collector of Revenue toward this. Should they furnish the Treasurer with a list of judgments and delinquent taxes or is the duty of the Treasurer to go search their records to find these things? I have been unable to find anything in regard to this. If you could give me your opinion in regard to this matter it sure would be greatly appreciated."

Section 550.270, RSMo 1949, referred to in the letter of inquiry, reads as follows:

"The county treasurers shall pay out all such fees to the proper owners as the same may be called for; provided, that before any such fees shall be paid the party to whom the same is due shall furnish satisfactory evidence to the treasurer that he

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or she, as the case may be, is not at the time indebted to the state or county, on account of delinquent back taxes, or is indebted to the state or county on account of any fine, penalty, forfeitures or forfeited recognizances or costs for a violation of any criminal statute of this state, or for contempt of any court, no matter if the same shall have been paid by oath of insolvency as provided by law; or is indebted to the state or any county on account of any funds coming to his hands by reason of any public office; provided further, that after deducting the amount of the indebtedness of the claimant, if any, on account of any or all of the various causes herein enumerated, the treasurer shall pay him the balance, giving duplicate receipts for the separate amounts paid, one of which shall be filed with the county clerk, who shall charge the treasurer with the same, but if the indebtedness of the claimant equals or exceeds the amount of his fees, the treasurer shall give him credit for the amount of his fees, stating on what account, and shall make duplicate receipts for the same, one of which he shall deliver to the claimant and the other he shall file with the county clerk, who shall charge the treasurer with all such receipts, and in his regular settlements with the county court the treasurer shall make a full and complete exhibit of all his acts and doings under sections 550.260 to 550.300." (Emphasis ours.)

It is clear that through the enactment of this statute the General Assembly intended to provide a method for the coercive payment of indebtedness due or owing the state or county by persons claiming fees in criminal cases. Such coercive payment is, of course, limited to the items enumerated in the statutes consisting of delinquent back taxes, fines, penalties, forfeitures, forfeited recognizances, criminal costs, contempt of court, or indebtedness arising by reason of public moneys in the hands of the claimant by virtue of being a public officer.

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It is true that the statute does not outline the procedure to be followed precisely by the county treasurer in assuring himself that such claimant is not so indebted. We have examined statutes relating to officials who might or could have some connection with the collection of the items enumerated, and do not find that any of such statutes require such officials to certify facts relating thereto to the county treasurer. However, we do believe that the provision in the statute requiring claimants to furnish "satisfactory evidence" to the treasurer that such claimant is not so indebted affords a measure of protection to the county treasurer insofar as his liability upon his official bond may be concerned. We believe that under the clear wording of the statute the county treasurer may reasonably require a reasonable amount of proof that such indebtedness does not, in fact, exist. We believe that among such reasonable requirements might be one that the claimant submit to the county treasurer a sworn statement reciting that such claimant is not so indebted.

If such statement be made wilfully, and knowing the same to be false, it would serve as the basis for a criminal prosecution of the claimant. We believe that the threat of such prosecution would serve as an effective deterrent against the collection of fees not rightfully due. We further believe that by proceeding in this manner the county treasurer would relieve himself of liability upon his official bond, because it certainly could not be said that he had not acted in a careful and prudent manner to safeguard the rights of the state and county.

CONCLUSION

In the premises, we are of the opinion that a county treasurer may reasonably require evidence of the non-indebtedness to the state or county based upon any of the items enumerated in Section 550.270, RSMo 1949, of any person claiming fees payable as criminal costs.

We are further of the opinion that if such required evidence is of a quantum to satisfy a reasonably prudent man that no such indebtedness does in fact exist, that such county treasurer would thereby be relieved of liability upon his official bond arising by virtue of having made payment of such claim to a person who in fact was not lawfully entitled thereto.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

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