

COUNTY COLLECTOR:
COUNTY CLERK:
COMPENSATION:

1. A person appointed by the county clerk under Section 52.180, RSMo, in case of death, resignation, removal or other disability of a county collector to examine the tax books, ascertain the amount remaining uncollected and make out a correct abstract of the same is entitled to be compensated for his services by the county. 2. Persons appointed by the legal representative or sureties of the collector to perform such duties are not entitled to be compensated by the county.

OPINION NO. 387

August 7, 1970

Honorable Haskell Holman
Auditor of Missouri
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Holman:

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

"1. When a vacancy occurs in the office of County Collector and persons are appointed by the County Clerk, by legal representatives of the Collector and by the sureties of the Collector, are said appointees entitled to receive compensation and expense reimbursement from county revenue funds for the services required to be performed by them as contained in the provisions of Section 52.180 RSMo.?"

"2. In the event the only appointee is that made by the County Clerk, would the compensation and expenses for his services be paid by the county?"

Section 52.180, RSMo, to which you refer provides in part:

"In case of the death, resignation, removal or other disability of any county collector, during the time the tax books are in his hands, and before the time specified for making settlements, the county clerk shall demand and take charge of the tax books. Said clerk shall appoint one competent person, the legal representatives of the collector may choose a second, and the sureties of the collector may

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choose a third, and the persons so appointed and chosen shall examine said tax books, and it shall be their duty to ascertain the amount remaining uncollected, and make out a correct abstract of the same. If the representatives or sureties of such collector shall fail or refuse to choose persons to make such examination, then the person appointed by the county clerk shall proceed to make the same and report the same to the county clerk, provided, that should there be but a small portion of the taxes collected at the time of the death of the collector, then the amount actually collected shall be ascertained and the same books used in completing the collections."

Under this statute it is mandatory that the county clerk appoint a competent person to perform the duties required by this statute. It is discretionary for the legal representative and sureties of the collector to appoint someone to represent them. The county clerk is not authorized to appoint persons to represent the collector or the sureties when the legal representative or sureties of the collector fail or refuse to do so. In fact, the statute provides for the person appointed by the county clerk to proceed to make the examination of the tax books and report the results to the county clerk when the legal representative or sureties of the collector fail to do so. This statute is silent as to whether compensation is to be paid to the persons appointed by the county clerk or by the representative and sureties of the collector. Attention is called to the fact that under this statute the county clerk is not required to perform these duties but he is required to appoint some other person to do the work and report the results to him. The question of compensation to be paid a public officer for additional duties is not involved in this matter because the county clerk is not required to do the work. The person appointed by the county clerk is required to perform the duties of auditing the books and reporting the results to the county clerk. He is not vested with any sovereign functions of the government or any discretionary power. He is not a county officer. *State ex rel. Pickett v. Truman*, 64 S.W.2d 105.

When a statute requires certain work to be performed for the benefit of the county and authorizes someone to be appointed or employed to perform such work, it impliedly authorizes such person to be compensated for his services by the county. *Aslin v. Stoddard County*, 106 S.W.2d 472. It is our view that the person appointed to examine the tax books as required under Section 52.180 is to be compensated by the county. *Copp v. St. Louis County*, 34 Mo. 383.

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The persons appointed by the legal representative or sureties of the collector are not employed by the county. In the absence of a statute authorizing them to be compensated by the county, they are not entitled to any compensation from the county. King v. Maries County, 297 Mo. 488, 249 S.W. 418.

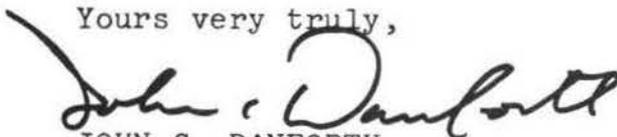
CONCLUSION

It is the opinion of this office that:

1. A person appointed by the county clerk under Section 52.180, RSMo, in case of death, resignation, removal or other disability of a county collector to examine the tax books, ascertain the amount remaining uncollected and make out a correct abstract of the same is entitled to be compensated for his services by the county.
2. Persons appointed by the legal representative or sureties of the collector to perform such duties are not entitled to be compensated by the county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,


JOHN C. DANFORTH
Attorney General