

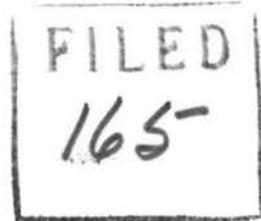
COUNTY COLLECTORS:  
COMPENSATION:

In regard to determining the rates of commissions of county collectors of third class counties whose offices fall within subsection 14(a) of Section 52.260, RSMo 1969, insofar as county collectors are concerned: 1. The phrase "tax bills placed in his hands" as referred to in subsection 14(a) of Section 52.260, RSMo 1969, does not include back taxes for prior years. 2. A collector is entitled to a commission for collecting back taxes for prior years only in accordance with Section 52.290, RSMo 1969.

OPINION NO. 165

April 8, 1971

Honorable Hal E. Hunter, Jr.  
Prosecuting Attorney  
New Madrid County  
New Madrid County Court House  
New Madrid, Missouri 63869



Dear Mr. Hunter:

This is to acknowledge receipt of your request for an official opinion from this office which reads in part as follows:

"My office is in need of an opinion from your office interpreting Section 52.260 of the R.S.Mo. 1969 with particular reference to paragraph 14 subparagraph (a), wherein it says that the Collector shall retain as commission 'on all sums collected up to and including 80% of the total amount of the tax bills placed in his hands, 1/2 of 1% commission; on all sums collected over 80% and up to and including 95%, 1% commission; on all sums collected over 95%, 2% commission;'. "

"If the words contained in subparagraph (a) of said Section referring to a total amount of tax bills placed in his hands refer to current taxes then the Collector of New Madrid County is entitled to retain additional commissions inasmuch as his collections exceed 80%. If these words mean that the total amount

Honorable Hal E. Hunter Jr.

of the tax bills placed in his hands include current taxes and back taxes, then the collections do not amount to 80% and it results in a change of commissions.

"This question was raised in the immediate audit and I have advised the County Collector, and he has agreed, to place the disputed sums in escrow until such time as we can receive your opinion and both parties will abide by the opinion of your office."

It is submitted that the issue for consideration is whether or not the phrase "tax bills placed in his hands" includes only taxes for the current year or whether this phrase includes back taxes for prior years.

Statutory provisions relating to the compensation of county collectors of third class counties are found in Sections 52.250 through 52.290, RSMo 1969. Section 52.250 provides that collectors in third class counties shall receive one half of one percent of all current taxes collected, including current delinquent taxes, but exclusive of all current railroad and utility taxes collected. This compensation is exclusive of and unaccountable in the maximum commissions provided in Sections 52.260 to 52.280. Section 52.260 provides that the collector in counties not having township organization shall collect and retain commissions for collecting all state, county, bridge, road, school, and all other local taxes, including merchants', manufacturers', and liquor and beer licenses, other than back, delinquent, and ditch and levee taxes, and the commissions constitute his compensation except in counties where the collector is paid a salary in lieu of fees. It is further provided in subsection 14(a) of Section 52.260, that in all counties wherein the total amount levied for any one year exceeds two million dollars and is less than four million dollars; the collector of revenue shall receive the following commissions for collecting the sums he is authorized to collect:

"(a) On all sums collected up to and including eighty percent of the total amount of the tax bills placed in his hands, one-half of one percent commission; on all sums collected over eighty percent and up to and including ninety-five percent, one percent commission; on all sums collected over ninety-five percent, two percent commission; . . ."

Honorable Hal E. Hunter, Jr.

Section 52.270 in referring to limits on commissions, provides in subsection (3) that the limitation applies to fees and commissions on current taxes, but does not apply to commissions on the collection of back and delinquent taxes and ditch and levee taxes nor to fees provided by Section 52.250. Section 52.290 specifically provides that the collector in all counties shall be allowed a commission for the collection of delinquent and back taxes of two percent on all sums collected to be added to the face of the tax bill and collected from the party paying the tax.

In the case of State ex rel Shannon County v. Hawkins, et al., 70 S.W. 119, 169 Mo. 615, the question before the court was whether the collector was entitled to a commission on collections for back taxes in addition to the general commissions as set forth in the predecessor of Section 52.260; Section 9260 Rev. St. 1899, which read in part as follows:

"The collector shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:

\* \* \*

"xii. In all counties or cities wherein the total amount of all such taxes and licenses levied for any one year exceeds one million dollars, the collector of revenue shall receive, collect and retain, as full compensation for his services for collecting all revenue and other dues which he is authorized to collect, belonging to the state, school, county and city, the following commissions, viz: on current and tax revenues as follows: on all such tax bills placed in his hands, one-half of one percent commission; on all sums collected over eighty percent and up to and including ninety-five percent one percent commission; on all sums collected over ninety-five percent two percent commission. . . . On all back taxes and all other delinquent taxes he shall be allowed a commission of two percent which shall be added to the face of the tax bill and collected from the party paying such tax as a penalty, in the same manner as other penalties are collected and enforced." (Emphasis added).

Honorable Hal E. Hunter, Jr.

A contention was made that Section 9260, Rev. St. 1899, excluded back taxes altogether from its provisions. The court ruled to the contrary and held that, under said section, a collector was entitled to compensation for collecting back taxes to be deducted from the taxes collected, and further compensation under Section 9309; the predecessor to Section 52.290, for collecting said taxes to be taxed against the delinquent tax payer as penalty and cost.

Based on the holding in the Hawkins case, supra, an argument could be made that back taxes for prior years would be included in the phrase "tax bills placed in his hands". However, in Senate Bill No. 62 of the Seventieth General Assembly which became effective on October 13, 1959, substantial changes were made in Section 52.260, RSMo. With the omitted matter enclosed in brackets, the new legislation reads in part as follows:

"The collector in counties not having township organization shall collect and retain [receive as full compensation for his services in collecting the revenue except back taxes] the following commissions [and no more] for collecting [the revenue] all [the whole] state, county, bridge, road, school and all other local taxes, including merchants', manufacturers' and [dram shop] liquor and beer licenses, other than back delinquent and ditch and levy taxes, and the commissions constitute his compensation except in counties where the collector is paid [by law] a salary in lieu of fees: [and other compensation]

\* \* \*

(14) In all counties wherein the total amount [of all such taxes and licenses] levied for any one year exceeds two million dollars, the collector of revenue shall receive, collect and retain [as full compensation for his services] for collecting all revenues and other dues which he is authorized to collect belonging to the state, school and county [and city] the following commissions, viz: [on current and tax revenues, as follows:]

\* \* \*

Honorable Hal E. Hunter, Jr.

"On all sums up to and including eighty percent of the total amount of [such] the tax bills placed in his hands, one-half of one percent commission; on all sums collected over eighty percent and up to and including ninety-five percent, one percent commission; on all sums collected over ninety-five percent, two percent commission;

\* \* \*

"[On all back taxes and all other delinquent taxes, he shall be allowed a commission of two percent which shall be added to the face of the tax bill and collected from the party paying such tax as a penalty in the same manner as other penalties are collected and enforced; which commission the collector shall be entitled to retain as compensation for additional services rendered in collecting delinquent taxes in the amount of said commission shall not be included in computing the maximum salary allowed the collector.]"

It is a rule of statutory construction that the legislature is aware of interpretation placed upon existing statutes and by amending a statute or enacting a new statute on the same subject, the legislature intends to effect some change in the existing law. Wright v. J. A. Tobin Construction Co., 365 S.W.2d 742. As a result of the above statutory changes in Section 52.260, RSMo, it is our view that the legislature was aware of the holding in the Hawkins case, supra, and intended to omit back taxes in providing for the collector's commissions under this section.

We conclude that the phrase "tax bills placed in his hands" does not include back taxes for prior years; however, it is our view that a collector is entitled to a commission for collecting such taxes only in accordance with Section 52.290; and that back taxes are not included in sums collected as set forth in subsection 14(a) of Section 52.260.

#### CONCLUSION

In regard to determining the rates of commissions of county collectors of third class counties whose offices fall within subsection 14(a) of Section 52.260, RSMo 1969, the opinion of this office is as follows:

Honorable Hal E. Hunter, Jr.

1. The phrase "tax bills placed in his hands" as referred to in subsection 14(a) of Section 52.260, RSMo 1969, does not include back taxes for prior years.

2. A collector is entitled to a commission for collecting back taxes for prior years only in accordance with Section 52.290, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, B. J. Jones.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH  
Attorney General