

IN RE: Method to be followed by State Auditor to Determine
the rate of percentage of commission on taxes collected
to be allowed County Collectors in Annual Settlement with
Auditor.

Sec 9935-69. R.S. Mo 1929

May 8, 1933.

Mr. Forrest Smith
State Auditor
Jefferson City, Mo.



Dear Sir:

Your letter reads as follows:

"We are handing you herewith the annual settlement as returned by the Collector of Oregon County, and request that you interpret the meaning of Section 9935 regarding the amount of tax assessed and levied for any one year; whether we should use the total of item 1, or the combined totals of items 1 and 2. In this particular case, the charge established by item 1 would establish the collector's commission under class 8; the total of items 1 and 2 would put him in class 10."

Section 9935 R. S. of Mo. 1929, fixes full compensation of county collector for collecting the Revenue except back tax, which compensation for collecting back taxes is jointly fixed by Sections 9935 and 9969.

Section 9935 provides that, "the collector shall receive as full compensation for his services in collecting the Revenue, except back taxes, the following commissions and no more."

Then follows fifteen subdivisions fixing the per cent of commissions allowed collectors on Taxes collected and which per cent of collectors' commissions is, by Sec. 9935, determined by the whole amount of all Taxes and Licenses Levied in the county or city, for a year, -- that is by the amount of Taxes and Licenses ordered or required to be raised and not by the amount actually collected.

To illustrate, Subdivisions I. and II. respectively provide as follows:

"I. In each county in this state wherein the

whole state, county, bridge, road, school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year amount to five thousand dollars or less, a commission of ten per cent, on the amount collected.

"II. In all counties wherein the total amount of all such taxes and licenses levied for any one year is over five thousand dollars, a commission of ten per cent. on the first five thousand dollars collected and six per cent. on whatever amount may be collected over five thousand dollars. "

The remaining thirteen subdivisions of Sec. 9935 are couched in same terms with the per cent. of rate of commission decreasing progressively as whole amount of Taxes levied increases in each of the respective classes of counties and cities.

Turning now to your Revenue form No. 6, showing Annual Settlement as returned of Oregon County Collector with State Auditor to which you ask me to apply the above set forth provisions of Sec. 9935, permit me to say I find in said return of Oregon County Collector the following facts: "you have according to the collector's return, upon which he makes his Annual Settlement, debits or charges against the collector divided into three items:

" Item No. 1, showing the charges for current Taxes, the total of which is Ninety-three Thousand Four Hundred and Seventy-Seven Dollars and Sixty-Seven Cents, (\$93,477.67), and which total does not include Railroad Drainage and Levee Taxes.

" Item No. 2, shows the amount of Back Taxes prior to the current year with which collector is charged and the total of which is Ninety-two Thousand, Six Hundred and Thirty-three Dollars and Thirty-five Cents (\$92,633.35.).

" Item No. 3, showing the charge against the collector for Railroad, Telegraph, Telephone, Drainage and Levee Taxes totaling Fourteen Thousand and Seventy-seven Dollars and Ninety-seven Cents (\$14,077.97) but which item No. 3 I will not consider herein further because the Statute definitely fixes the collector's commission for item No. 3. "

You wish an interpretation of Sec. 9935,

informing you what amount of money in shape of commissions the Oregon County Collector is legally entitled to, under his Annual Settlement above referred to and how you should determine the amount of commissions due the Collector.

The Statute, Sec. 9935, classifies the counties and cities of the State according to the total amount of State, County, Bridge, Road, School and all other local taxes including Merchants and Dramshop Licenses Assessed and Levied for any one year and then arbitrarily fixes a named percentage of all that part of said above assessed and levied taxes which at Date of Collector's Annual Settlement have been collected as the commission the collector shall receive.

Now apply that rule to the facts shown in Revenue form No. 6 as returned by the Collector of Oregon County for his Annual Settlement with the Auditor.

We find the fact to be that Item No. 1, in said return of said collector shows there is a Debit or Charge against the Collector of \$93,477.67 for the current taxes (Except Railroad, Drainage and Levee Taxes) and item No. 2. shows \$92,633.35 against the collector for back tax prior to the current year. Both these two amounts of Taxes represented by items 1. and 2. were of course Assessed and Levied in Oregon County as State, County, Bridge, Road, School and all other local Taxes including Merchants and other Licenses and the two items, numbers One and Two represent the whole of the Taxes of the above named classes.

Add together the items One and Two, being respectively \$93,477.67 and \$92,633.35, making a Total of the whole amount of Taxes Levied of \$186,111.02.

Now in what class does a total Tax Levy of \$186,111.02, under Section 9935, of the Statute, place Oregon County? Turning now to the Classified Subdivisions of Sec. 9935, we find Sub-division 10, reads as follows:

"X. In all counties wherein the total amount of all such taxes and licenses levied for any one year exceeds one hundred and fifty thousand dollars and is less than two hundred thousand dollars, a commission of two and one-fourth per cent on the first one hundred and fifty thousand dollars collected and one-fourth of one per cent. on whatever amount may be col-

lected over one hundred and fifty thousand dollars."

We observe that the class of counties in Subdivision Ten are those wherein the Total Taxes and Licenses Levied for any one year exceeds \$150,000.00, and is less than \$300,000.00, and as Oregon County's Total Tax Levy was \$186,111.02, that county falls in Class No. Ten. The percentage allowed the collector, as his commission, by Sec. 9935 on Taxes collected in counties falling in class Ten is Two and One-fourth (2 1/4%) per cent. on the first One Hundred and Fifty Thousand Dollars collected and One-Fourth (1/4) of One (1) per cent. on whatever amount may be collected over One Hundred and Fifty Thousand Dollars. The Total Taxes Levied in Oregon County is \$186,111.02.

Take the net amount now collected by the collector of the Total amount of \$186,111.02 Levied (your books disclose what this amount is, I assume) and figure 2 1/4th per cent. on the first \$150,000.00 the collector has now collected and 1/4th of one per cent on any amount over One Hundred and Fifty Thousand Dollars the collector has now collected and the Total of the amounts of the Two Percentages is the amount of the collector's commission.

Our Supreme Court has approved this construction of Sec. 9935, as the proper Method of fixing the amount of the collector's commissions in the case of State ex rel. Scotland County vs. Ewing Collector et al, in which the Supreme Court said in 116, No. 1. c. 134:

"It is manifest from a reading of the foregoing provisions that the per cent. of the commissions should have been determined by the amount of all such Taxes Levied, that is by the amount ordered and required to be raised and not by the amount actually collected."

(The 'Foregoing Provisions' referred to by the court in the above quotation from the Courts opinion are the Provisions of Section 7640, R. S. of Mo. of 1889, which are the same as the Provisions of Sec. 9935, R. S. of Mo. of 1929, which we have been considering.)

And the Court further said in the same opinion (116, No. 1. c. 134):

"Section 7640 provides that the collector shall receive as full compensation for his services in

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collecting the Revenue, excepting back Taxes, commissions to be determined upon the whole State, County, Bridge, Road, School and all other local Taxes, including Merchants' and Dramshop Licenses, assessed for any one year, the per cent. to be estimated on the amount collected."

You will notice each one of the Subdivisions of Sec. 9935, R. S. Mo., 1929, expressly provides the amount of the commissions shall be a certain designated per cent. of the Taxes collected.

I return you herewith the Annual Settlement of the Oregon County collector with the county court of said county for the year ending February 28th, 1933, and also your correspondence with the Oregon County Collector.

Very respectfully,

Edw. C. Crow

APPROVED:

ROY McKITTRICK
Attorney-General

ECC:AJ