

ANTI-NEPOTISM: Commission of the township collectors.

12754 12327-1316 R2 No-1179
7-26
July 12, 1933



Hon. Roth N. Faubion
Prosecuting Attorney
Barton County
Lamar, Missouri

Dear Sir:

Your letter of June 28th, 1933, addressed to this office has been handed me for reply. You ask for an opinion in your letter which is as follows:

"I have two opinions that I wish your office would render me.

One is whether in the opinion of your office does the Anti-Nepotism law apply to a rural school district so that a director may not hire any of his close relatives as a teacher in said district.

The other is as follows. The law states that collectors shall receive a certain per cent on moneys received and disbursed. In the case of a township collector does this mean that when he turns the money over to a successor that the act of turning over said money is a disbursement so that said collector would be entitled to his fee for making a disbursement?"

Our records show that you were written a letter on July 6th explaining the situation with reference to the first paragraph of your letter relating to the Anti-Nepotism law. There is a case pending in the Supreme Court at this time

directly in point which will decide the matter of a near relative to a director teaching in a school district.

Regarding the second paragraph of your letter, Section 12284 R. S. No. 1929, deals with books, papers and moneys of a retiring township officer. This section is as follows:

"Whenever the term of office of any township officer shall expire, and others are elected or appointed and qualified as their successors, such successors shall, immediately after entering upon the duties of their office, demand and receive from his or their predecessors, or their legal representatives, all the books, papers and money under his or their control belonging to such office, and such books, papers and other property shall be delivered upon oath that the same are all the moneys, books, papers and other property under his control belonging to such township; duplicate receipts shall be given the outgoing officer for the same, who shall retain one copy and deliver the other to the township clerk, who shall charge the incoming officer with the value thereof."

In the first place we are at a loss to understand how a township collector could have on hand at the termination of his duties as township collector any money in view of the fact that he must make annual statements on the first Monday of March of each year. Also, under Section 12337 R. S. No. 1929, he is compelled to pay after deducting his commission all State and county taxes collected by him during the preceding month. Said section being as follows:

"The township collector shall on or before the fifth day of each month, make out and file in the office of the clerk of the county court a statement, in writing, showing the amount of taxes collected by him for state, county, school, road, township and all other purposes during the preceding month, which statement shall be sworn to by such township collector before the county clerk or some other officer authorized to

administer oaths. On or before the tenth day in each month the township collector shall, after deducting his commissions, pay over to the county treasurer and ex officio collector all state and county taxes collected by him during the preceding month, as shown by the sworn statement required by this section, and take duplicate receipts therefor, one of which he shall retain and the other he shall file with the county clerk; and the county clerk shall charge the treasurer with the amounts so receipted for, to be accounted for at the annual settlement; and the township collector shall, in like manner, on or before the 30th day of each month, pay over to the township trustee an ex officio treasurer after deducting his commission all township taxes and funds of every kind belonging to said township, collected by him during the previous month, and take duplicate receipts therefor, one of which he shall retain and the other he shall deposit with the township clerk, and the township clerk shall charge the township trustee and ex officio treasurer with the amount so receipted for; and the township collector shall likewise make annual settlements with the township board on or before the twentieth day of March in each year. He shall receive a commission of two and one-half per cent. on the first forty thousand dollars collected; one per cent. on the next forty thousand dollars collected; and three-fourths per cent. on the remainder of all moneys collected by him. If any township collector shall fail or refuse to file the statement required by this section, or, having filed such statement, shall neglect or refuse to pay over to the county treasurer and ex officio collector the state and county taxes collected by him during the previous month, as shown by said statement, the county clerk shall, immediately

after such default, and not later than the fifteenth day of the month in which such statement was or should have been made, certify such fact to the state auditor and the prosecuting attorney shall proceed against such defaulting township collector in the same manner as is provided by section 9928 for proceeding against defaulting county collectors and the said township collector shall forfeit his commission on all moneys collected and wrongfully withheld, and otherwise be liable to all the penalties imposed by said section 9928.* * * * *

From the foregoing section it would appear that if any township collector, if he were going out of office could readily settle and pay over any moneys which he might have on hand and deduct his commission therefrom, and therefore he would not have any money on hand to turn over to his successor; If he fails to do so the section sets out the procedure to compel him and he loses his commissions.

Lastly, Section 12316 R. S. Mo. 1939 reads as follows:

"The county treasurer in counties adopting township organization shall be allowed a salary by the county court as at present provided by law, the county collector for collecting and paying over the same shall be allowed a commission of two per cent. on all corporation taxes, back taxes, licenses merchants' tax and tax on railroads, and five per cent. on all delinquent taxes, which shall be taxed as costs against such delinquents and collected as other taxes: Provided, he shall receive nothing for paying over money to his successor in office."

