

IN RE: COUNTY TREASURER TO EFFECT SETTLEMENT WITH  
COUNTY COURT FOR COUNTY FUNDS -- HOW?

12111-43-52 R.S. Mo 1929

June 5, 1933. <sup>65</sup>



Mr. J. B. McGuffin  
Prosecuting Attorney  
Lawrence County  
Aurora, Missouri

Dear Sir:

Your letter of May 3 requesting an opinion of this office is in words and figures as follows:

"One Crawford, former Treasurer of this County, retired and made his final settlement with the County Court on December 31, 1932, and turned over to his successor - the newly elected Treasurer the amount balanced on his Books and Settlement - \$26,452.42.

"Some weeks, ( perhaps six or eight weeks) thereafter Crawford discovered that in the four County Depositories of this County that there remained a balance, in all totaling \$233.80, to the credit of himself - Crawford - as County Treasurer. That is that he long that total amount in his settlement.

"Crawford went to the County Court and explained the matter saying that sometimes when the funds upon which County Warrants were drawn, was short that he advanced out of his own personal funds sufficient amounts to cover the shortage, and therefore asked that the above amounts in Depositories to credit of himself County Treasurer, be allowed to be transferred to his own personal account.

"My opinion was asked on the matter by the County Court and I gave it that the County Treasurer had no right to mingle his own funds with County funds, and that he had no

right to go behind the settlement already had unless he could clearly show mistake. I held that our County was entitled to the fund.

"I respectfully ask your opinion. Our County is not in position or able to have an audit made at the present time."

Section 12111, R. S. Mo. 1929, provides:

"In the settlements required by law to be made by the county court with treasurers and other officers holding county funds, whether quarterly, yearly or otherwise, it shall be the duty of the court, or some judge thereof, to ascertain by actual examination and count the amount of balances and funds in the hands of such officers, and to what particular fund it appertains, and such examination and count shall include all funds on hand up to the day on which such settlement is made."

Section 12143, R. S. Mo. 1929, provides:

"The county treasurer shall keep a just account of all moneys received and disbursed, and regular abstracts of all warrants and scrips drawn on the treasury, and paid or received by him, and shall cancel the same by writing in ink "paid" across the face thereof, when paid or received."

Section 12152, R. S. Mo. 1929, provides:

"He shall settle his accounts with the court semi-annually, at its first and third regular terms in each year; and at the end of his term, or if he resign or be removed from office, he, or if he die, his executor or administrator, shall immediately make such settlement, and deliver to his successor in office all things pertaining thereto, together with all money belonging to the county; and at each settlement the court shall immediately proceed to ascertain, by actual examination and count, the amount of balances and funds in the hands of such treasurer to be accounted for, and to what particular fund or funds it

appertains, and cause to be spread on its records, in connection with the entry of such settlement, the result of such examination and count."

In interpreting the above sections, in *Cole County vs. Dallmeyer*, 13 S. W. 687, 101 Mo. 57, the Supreme Court said:

"The evidence tends to show that Schmidt made a settlement with the county on May 6, 1884, \*\*\*\*\*. The amount paid by the executrix is evidenced by the receipt of Tanner, the succeeding treasurer, \*\*\*\*\*. Although this receipt professes to be a receipt for the balance due the interest fund, still it shows the exact amount paid on that fund; and, if there is in fact a balance still due, the receipt is no obstacle in the way of recovering that balance. The receipt is but prima facie evidence; \*\*\*\*\*. On the other hand it was competent for the defendant to show that the whole amount paid by the executrix was all that was due the county on the various funds."

Again, in interpreting the above sections, in *Clark County vs. Hayman*, 44 S. W. 237, 142 Mo. 430, the Supreme Court said:

"He was bound by his bond to faithfully perform the duties which his sureties undertook he should perform, among which was to keep a faithful and just account of all moneys payable into the county treasury which he received and keep an account of the receipts and expenditures. Having charged himself with the moneys thus received upon the books of his office, it is the clearest and most satisfactory evidence of his liability therefor and he and his sureties are only to be discharged from a liability therefor by showing disbursements on lawful warrants or such satisfactory evidence of mistake in so doing as would justify a court of equity in correcting the account, and of this there is not the semblance of evidence in this record."

\*\*\*\*\*settlement was shown by defendant's

own witness, Mr. Ball, to be absolutely correct, and that it exhibited the exact amount due from Mr. Penn at the expiration of his office. \*, independently of the settlement, the books of the treasurer showed these balances were due to the several funds.\*\*\*\* We see no hardship whatever in holding that, prima facie, the settlement made by the executors of Mr. Penn showed the State of his account with the county treasurer."

Again, in the case of *The County of Marion vs. Phillips*, 45 Mo. 75, the Supreme Court said:

"We hold then, that the defendant in the case at bar, in making his settlement with the County Court of Marion County, settled and adjusted his claims and liabilities with the public agents of the county; that the entry upon the records of the court was not a judgment at law, but the record of the results of that settlement -- a statement of his account, as adjusted between him and the county -- and that any mistake in that settlement clearly proved is open to correction, and in the same manner as though it were made with an individual."

In the case of *St. Louis Charcoal Co. vs. Moore*, 163 S. W. 745; 178 Mo. App. 692, the Appellate Court said; while dealing with the doctrine of title by confusion of goods:

"Also the contention that plaintiff acquired title to Smith's personal funds, under the doctrine of title by confusion, is without merit. To so deposit his personal moneys with those of the corporation was unwise, but it did not necessarily imply dishonesty in dealing with the funds of the latter. It appears that the company's books were correctly kept, so far as concerned its affairs, and later the accounts were separated and a settlement agreed upon which both parties admitted to be correct. There was therefore nothing in this theory to lend aid to plaintiff's case.

"The judgment should be reversed. It is so ordered. Reynolds, P. J., and Norton, J. concur."

Also the two points involved in your inquiry are:

- (1) Is the settlement of a retiring county treasurer's account final or may it be corrected?
- (2) If said settlement is subject to correction and the correction reveals a balance in different county funds, is the retiring county treasurer personally entitled to said balances upon a showing that he confused his personal funds with county funds?

The statutory settlement of County Treasurer, retiring from office, is not in all events a final settlement simply because he charged himself with \$26,452.42, as moneys received in the performance of his duties, and the court agreeing to settle at that figure. The books of his office evidencing that exact figure would be prima facie evidence that the settlement was final; but it is the retiring treasurer's equitable right to show that this total amount he charged himself with is not due the county in the various funds. Independently of the statutory settlement, the retiring treasurer has the right to show that his books, properly balanced, show a different amount credited to several funds. In other words, by proper proof, he has an equitable right to show that the charge of \$26,452.42 against himself, upon retiring from office, is a mistake in fact. Your county court, in its settlement with the retiring county treasurer, in law, acted as the auditor of public accounts and the figure representing the legal statutory settlement is subject to review by said court and may be corrected by order of said court if any mistake in the original settlement is clearly proved to their satisfaction.

The fact that your retiring county treasurer checked out of office \$233.80 long in his accounts, and that during his term of office he advanced money from his personal funds to pay county warrants when the county funds were not available to pay said warrants, would not justify handing over the \$233.80 which was long in his account. Such practice in office may have been inspired by a noble motive; but to sanction it would encourage the mingling of personal funds with public funds. The law provides a method of protesting and paying warrants

with interest when county funds are not available to pay said warrants on demand. There was no statutory duty on the treasurer to make personal advances claimed by him. Although such advancements are not expressly prohibited, such a practice should be discouraged.

The county court has the statutory right to audit all claims against the county and to allow same if they find said claim is a valid legal obligation. They have the right to audit the claim of advancement in the instant case; after correcting any mistake of fact in the original settlement.

The retiring county treasurer should be held to strict proof of his several advancements on particular warrants and he would be entitled at best only to his bona fide advancements as such and not to balances.

Respectfully submitted,

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WM. ORR SAWYERS  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

WOS/AJ