

IN RE: Maximum amount in commissions County Collectors  
can retain as compensation.

April 12, 1933.

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Hon. Dan M. Nee,  
Prosecuting Attorney,  
Greene County,  
Springfield, Missouri.

Dear Sir:

Your letter requesting an opinion reads as follows:

"The proposition confronts us here in Greene County as to the amount our Collector is permitted to retain annually as salary and commissions.

Under Section 9935, Revised Statutes of Missouri, 1929, the maximum amount which he may retain out of the current collections, is \$9,000.00. Then, Section 9969, Revised Statutes of Missouri, 1929, provides that he is entitled to commissions for the collection of delinquent taxes.

As I am informed now, the commissions which he is to receive from delinquent taxes, in addition to the regular collection of current taxes, will exceed considerably the sum of \$9,000.00.

Now, the question is, is he entitled to retain a maximum of \$9,000.00 from the commissions on delinquent taxes and the commissions on current taxes; or is he entitled to \$9,000.00 as commission on current taxes, then in addition to this amount, is he entitled also to commissions on further collections of delinquent taxes, even though the total amount of both exceed the \$9,000.00 fixed as the maximum under Section 9935?"

Section 9935 R.S. of Mo., 1929 corresponds to Section 12927 R.S. of Mo., 1919, and Section 9969 R.S. of Mo., 1929 corresponds to Section 12959 R.S. of Mo., 1919. These two sections, 9935 and 9969 in the revision of 1929, barring slight changes which are immaterial for the purpose of determining the question we are considering, are identically the same as Sections 12927 and 12959 R.S. of Mo., 1919.

Your letter presents the question whether or not Section 9935 R.S. of Mo., 1929 fixes the maximum compensation County Collectors may receive. The question you present involves a construction of

Sections 9935 and 9969 R.S. of Mo. of 1929; Section 9935 R.S. of Mo., 1929 provides, among other things, 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: \*\*\*"

Then follows fifteen subdivisions fixing the rates of commissions according to the amounts of revenue collected in the respective counties and the City of St. Louis. The pertinent parts of sub-sections XIV and XV provide as follows:

"XIV. In all counties or cities 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, county and city the following commissions, viz: \*\*\*

All such commissions hereinbefore enumerated shall be deducted and retained by such collector out of the amounts collected for state, school, county and city, respectively, and upon settlement with such collector shall be credited to his account and charged to the respective revenue accounts. On all back taxes and all other delinquent taxes, he shall be allowed a commission of two per cent., 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. The said collector shall pay all salaries and other expenses of his office and all other costs of collecting the respective revenues. \*\*\*

The collector shall make settlement and annually on the first Monday of March, and at the expiration of his term of office, with the proper officer of the city, or with the county court of the county for all commissions retained; and all commissions hereinbefore allowed shall be computed for the year or part of the year next preceding the dates of such settlement. Said collector shall present for allowance proper vouchers for all disbursements made by him on account of salaries and expenses of his office and other costs of collecting the revenue, which shall be allowed to him as against the commissions retained by him; and out of the residue of such commissions in his hands after deducting the amount of such vouchers allowed he shall be allowed and authorized to retain, as far as the said residue of such commissions in his hands will permit, a compensation at the rate of ten thousand dollars per annum. Should such residue of commissions be less than sufficient to cover the above compensation, then the entire residue shall be allowed to him, and shall be in full payment for his services. \*\*\*

All fees, commissions or other compensations heretofore charged, received or allowed by or to any such collector, as compensation for his services, whether under or by virtue of state law or not, are hereby abolished; and such collector and all his deputies and employes are hereby forbidden, under penalty of forfeiture of office to collect, charge or receive, directly or indirectly, any fees or commissions in the nature of compensation, or other compensation other than those allowed and authorized by this section.

XV. For the purpose of enabling the state auditor to determine the compensation of the collector to be paid by this state, it is hereby made the duty of the clerk of the county court, immediately after such annual settlement made by the collector, to make out and forward a statement to the state auditor, under the seal of the court, showing the aggregate of all such taxes and licenses levied for the year for which such settlement was made, including therein local, special and school and all other taxes; provided, that no collector shall be allowed to retain over nine thousand dollars of commissions and fees in any one year except as provided in subdivision fourteen herein; and all fees and commissions coming into the hands of any collector from any source whatever in excess of nine thousand dollars except as provided in subdivision fourteen, shall be paid into the city, county and state treasuries in proportion to the amount received on taxes collected for each; \*\*\*"

Section 9969 R.S. of Mo., 1929, reads as follows:

"Fees shall be allowed for services rendered under the provisions of this article as follows: To the collector, except in \*such cities, four per cent. on all sums collected; in such cities two per cent. on all sums collected--such per cent. to be taxed as costs and collected from the party redeeming. To the county clerk, for making the "back tax book" twenty-five cents per tract, to be taxed as costs and collected from the party redeeming such tract. To the circuit clerk, justice of the peace, sheriff and printer, such fees as are allowed by law for like services in civil cases, which shall be taxed as costs in the case; provided, that in no case shall the state, county or city be liable for any such costs, nor shall the county court or state auditor allow any claim for any costs incurred by the provisions of this article."

The legal history of these two sections shows Section 9969 R.S. of Mo., 1929 was first put on the statute books April 12, 1877, and was then, as now, applicable to back and delinquent taxes, and Section 11 of the Act read in part as follows:

"Fees shall be allowed for services rendered under the provisions of this act, as follows: To the collector, except in the city of St. Louis, four per centum on all sums collected; in the city of St. Louis two per centum on all sums collected, such per centum to be taxed as costs, and collected from the party redeeming."

We find Section 9935 R.S. of Mo., 1929, was enacted May 9, 1879 (See Session Laws of Missouri, 1879, p. 92) as an amendment to an Act regulating the fees of collectors passed May 2, 1877 (See Session Laws of Mo., 1877, p. 253). The Act of 1879 contained two sections and the first section contained only thirteen subdivisions and the same proviso as occurs in subdivision XV of Section 9935 R.S. of Mo., 1929; and subdivision 13 of 1879 referred to subdivision XII thereof for the exception mentioned in subdivision XV of Section 9935, R.S. of Mo., 1929. Two new subdivisions have by amendments through the years been added to what is now Section 9935, Chapter 59, R.S. of Mo., 1929. This Act of 1877 was a general law applicable to each county in the state and the city of St. Louis and allowed the Collector the commission named therein. Subdivision 12 of the Act of 1879 appears now as subdivision XV of Section 9935 R.S. of Mo., 1929.

We see Section 9935 fixes in subdivision XIV a maximum compensation which collectors are allowed to receive in counties and cities wherein the total amount of all taxes and licenses levied in any one year exceed two million dollars, and subdivision XV of said section contains the following provision:

"Provided that no collector shall be allowed to retain over nine thousand dollars of commissions and fees in any one year except as provided in subdivision fourteen herein."

And we find under the Back Tax and Delinquent Statute, Section 9969, which provides as follows:

"Fees shall be allowed for services rendered under the provisions of this article as follows: To the collector except in such cities four per cent. on all sums collected; in such cities two per cent. on all sums collected--such per cent. to be taxed as costs and collected from the party redeeming."

Your letter states "the commissions the Greene County Collector will receive from the delinquent taxes plus commission from current taxes will exceed nine thousand dollars--is the collector entitled to receive any sum in excess of nine thousand dollars in Greene County?" Section 9935 fixing a maximum amount allowed collectors was passed in 1879, two years after the back tax and delinquent statute, now Section

9969, was enacted. This back tax section, 9969, was enacted in 1877 and is an earlier and general statute, while Section 9935 is a later and special statute dealing minutely with the collector's commissions and compensation; each statute deals with the same subject, the collector's compensation.

If the collector's commission on current taxes plus his commission on delinquent taxes for the year will exceed the maximum of nine thousand dollars allowed by Section 9935, R.S. of Mo., 1929, then if full force is given to Section 9969, allowing the collector to retain all of the four per cent commission on back taxes, there is a conflict between the results produced by the operation of the two sections, 9935 and 9969 in this: that under Section 9935 the collector is limited to nine thousand dollars compensation, and under Section 9969 he is entitled to have the four per cent on all delinquent taxes even though his total compensation exceeds the nine thousand dollars maximum Section 9935 permits him to retain.

The rule in this situation is in case of a conflict between a general and a special provision of a statute, the special one prevails.

McGrew v. Mo. Pac. Ry. Co., 230 Mo., 496  
State ex rel Rosenblatt v. Lindell Hotel Co., 9 Mo. App. 450

Our Supreme Court has considered this question and construed these provisions of the statutes as to amount of compensation Collector can retain in case of

State ex rel Buchanan Co. v. Fulks, 296 Mo., l.c. p.626

in which it is said:

"Where there is one statute dealing with a subject in a general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one. \*\*\* But it is admitted that this case is within the proviso of subdivision XV of Section 12927. It must be obvious that "to the extent of any necessary repugnancy between them, the special will prevail over the general statute". The canons of construction require that the two statutes relating to the same subject should be harmonized and read together as constituting one law; the special being viewed as an exception to the general statute; otherwise, the proviso of Subsection XV is meaningless. Our conclusion is that Fulks was not entitled to retain the four per cent commissions on delinquent and back taxes provided by Sec. 12959, R.S., 1919, but was required to account for all commissions

My opinion is therefore that assuming your county is not under township organization and the total amount of taxes and licenses levied for any one year does not exceed two million dollars, your County Collector can retain only nine thousand dollars as his full compensation and must account in his annual settlement for all commissions from both current taxes and back or delinquent taxes in excess of nine thousand dollars.

Yours very respectfully,

EDWARD C. CROW.

APPROVED:

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Attorney General

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