

TAXATION AND REVENUE: Method of transferring and paying out funds collected by County Collector as school taxes.

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July 14, 1934.



Honorable Sam J. Porter,
County Clerk, Clinton County,
Plattsburg, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of June 12, 1934, such request being in the following terms:

"In reference to your opinion to E. H. Pittman, County Treasurer of Clinton County under date of May 14th, 1934, in reference to the payment by the collector of school moneys to the County Treasurer.

Mr. Pittman took the matter up with the County Court and upon due consideration referred Mr. Pittman to Section 9340 R. S. 1929. Kindly advise me as to your opinion in regard to this section. Trusting that I may hear from you at your earliest convenience."

In our opinion to Honorable E. H. Pittman, Treasurer of Clinton County, we stated it as our opinion that it is the duty of the County Collector to turn over money collected for school taxes to his County Treasurer and not directly to the Treasurer of the school districts, and that the County Collector should thereafter pay out the money so turned over to him on warrants drawn by the proper school district officials.

Our opinion as so furnished to Mr. Pittman remains unchanged for the reasons which are more fully set out below.

Revised Statutes Missouri 1929 Section 9264 provides as follows:

"Sec. 9264. Collector's receipts and compensation.--It shall be the duty of the county clerk to take a receipt from the county collector for the school taxes by him placed on the general tax books; and the collector shall proceed to collect the same in like manner as the state and county taxes are or may be collected, and he shall receive, as full compensation for his services on the amount collected and paid over by him, the same per cent. as is allowed by law to collector for collecting other taxes; and he shall pay over monthly, to the county treasurer, all such taxes collected and take his receipt therefor."

and Section 9340 provides as follows:

"Sec. 9340. Duties of collectors.--The county or township collector shall pay over to the treasurer of said board of

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education all moneys received and collected by him to which said board is entitled at least once in every month; and upon such payment he shall take duplicate receipts from said treasurer, one of which he shall file with the secretary of said board of education, and the other shall be filed in his settlement with the county court."

These two statutes would seem to be in conflict, one of them requiring the Collector to turn over school taxes collected by him to the Treasurer of his county, and the other requiring him to turn them over directly to the Treasurers of the school districts. The question then in issue is whether or not one of these statutes makes the other inoperative, entirely or to any extent, and, if so, which of the two statutes becomes inoperative. There are no Missouri cases in which this question has been raised, and since the question involves solely a matter of statutory construction, decisions from other jurisdictions bearing on the proper disposition by the Collector of school taxes are of little or no value, and this problem must be solved by an examination of these and related statutes.

I.

LEGISLATIVE HISTORY

Section 9264 was enacted as Laws of 1874, page 162, Section 68. Section 9340 was enacted as Laws of 1877, page 409, Part No. 7, and no substantial changes have been made in either of these two sections since their enactment. Thus, Section 9340 is the more recent statute. However, in 1897 what is now Revised Statutes Missouri 1929, Section 9337 was enacted (Laws of 1897, page 233) which provides in part as follows:

"Whenever any state or county school money apportioned to any town, city or consolidated school district shall have been paid to any county or township treasurer, as now provided by law, * * * "

Thus it would seem that in 1897 the Legislature thought that the law as it then existed contemplated that school money should be turned over to the County Treasurer, and this is the most recent new legislative enactment shedding light on the intention of the General Assembly.

II.

RELATED STATUTES

No other statute has been found indicating that the statutory scheme for the disposition of school taxes contemplates that the Treasurer of the County should not receive such money from the Collector and in fact several statutes indicate the contrary. Thus, Revised Statutes Missouri 1929, Section 9265, provides as follows:

"Sec. 9265. Collections of delinquent taxes.--The collector shall, at the time of returning the land delinquent list for state and county taxes, return therewith all land school taxes herein provided for which shall remain unpaid, and when so returned, the same shall be a lien on such real estate, and be collected in the same manner that other delinquent taxes on land are collected; and when so collected, shall be paid over to the county treasurer as other school taxes."

Likewise, Section 9266 provides as follows:

"Sec. 9266. County treasurers and their duties - - bond required as custodian of school moneys - compensation.-- The county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, until paid out on warrants duly issued by order of the board of directors or to the treasurer of some town, city or consolidated school district, as authorized by this chapter, except in counties having adopted the township organization law," * * *

and likewise provides that the County Treasurer -

"shall give a separate bond, with sufficient security, in double the probable amount of school moneys that shall come into his hands, payable to the state of Missouri, to be approved by the county court, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands;" * * *

Furthermore, Section 9337 continues from the part above quoted, as follows:

"the same shall, on the application of the treasurer of said town, city or consolidated school district, be paid over to him by said county or township treasurer, and the receipt of any such school district treasurer for said money shall be a lawful voucher for the disposition of said money by said county or township treasurer, and be accepted as such by the county court or other body or person having authority by law to make settlements with said county or township treasurer."

which would seem clearly to indicate that in 1897 the General Assembly thought that the person from whom the Treasurers of the school districts in any county should receive the school moneys was the County Treasurer and not the Collector.

III.

DECISIONS OF THE COURTS

As was pointed out above in no case in this state has the problem

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under consideration been raised. However, in several cases dealing with a construction of one or more of the statutes above referred to the courts seemed to take it for granted that the County Treasurer was to receive and should receive school taxes, and among these cases are the following: *State ex rel v. Cook*, 72 Mo. 496 (1880); *Sanderson v. County*, 195 Mo. 598, 93 S. W. 942 (1906); *State ex rel v. Weeks*, 92 Mo. App. 359 (1902); *School District No. 45 of Pemissot County v. Correll*, 220 Mo. App. 322, 286 S. W. 136 (1926). If Section 9340 should be decided to govern and to exclude and render inoperative Section 9264 there would not seem to be any reason or justification for the County Treasurer receiving any of the school funds derived from taxation.

IV.

CONSTRUCTION OF WORDS

It will be observed that Section 9340 requires the Collector to pay over to the Treasurer of the Board of Education the moneys "to which said board is entitled." The use of the word "entitled" must mean entitled by some statute of Missouri for the whole procedure for the handling of school funds is statutory. As was said above, no other statute has been found entitling the school districts to receive directly from the County Collector money collected as taxes, and in the absence of any such statutory authority it might well be argued that the language of Section 9340 above referred to contemplates some further statute to support it, and in the absence of such further statute Section 9340 is in this respect not repealed or nullified but is merely ineffective for want of additional legislation to support it. To say that Section 9340 governs and requires the County Collectors to turn over all school moneys collected by them to the school districts directly would involve a construction which would nullify Section 9264 and the other statutes above referred to which support Section 9264, and it would require a ruling that Section 9340, being enacted subsequent to Section 9264 repealed by implication Section 9264, and if there is any possibility of a reconciliation between seemingly conflicting statutes the courts are extremely reluctant to declare that there has been an implied repeal.

"The repeal of statutes by implication is not favored by the courts. (36 Cye. 1071; *Road District v. Huber*, 212 Mo. 551, 562; *State ex rel. v. Bishop*, 41 Mo. 16, 24.) The question of repeal is one of intention (*Curtwright v. Crow*, 44 Mo. App. 563, 568), and the presumption is always against the intention to repeal by implication where express terms are not used. (36 Cye. 1071, 1072; *Gasconade County v. Gordon*, 241 Mo. 569, 582; *State ex rel v. County Court*, 41 Mo. 453, 459.)" (*State ex rel Moseley v. Lee*, 319 Mo. 976, 989, 5 S. W. 2d 83 (1928).

In conclusion, it is our opinion that it is the duty of the County Collector to turn over money collected for school taxes to his County Treasurer and not directly to the Treasurer of the school districts in his County.

APPROVED:

Yours very truly,

EDWARD H. MILLER

ATTORNEY GENERAL.

ASSISTANT ATTORNEY GENERAL.