

COUNTY TREASURER: Duty to receive and receipt for money
tendered him, asserted to be county money.

September 13, 1934.



Honorable William Short
County Treasurer
Randolph County
Huntsville, Missouri

Dear Sir:

Your request for an opinion is as follows:

"I am seeking some information in regards to some office holders in this County and also this State.

"We have a condition in this County that no other County has or I do not think ever did have during the History of the State.

"On the 11th day of Aug. 1934, Marion Hulen and Oak Hunter went to Jefferson City and had with them the resignation of Herbert Lamb County Collector and asked the Governor to appoint Mrs. Wayland a lady in the office to fill out the term of Herbert Lamb from now to the 1st of next March, and got a commission from the Governor for her to fill out the term. She has not been sworn in or give a bond or Herbert Lamb has not been checked out or Mrs. Wayland checked in so as I see it we have no County Collector and when Mrs. Wayland comes in here on the 5th. of this month with the distribution for Aug. whose name will be signed to the check to make it lawful to me. Unless I get some information from you by that time I will not sign receipts for her or take the check from her if either one of the names or on the check Herbert Lamb or Lois Wayland as neither of them are County Collector now."

Section 12136, R. S. Mo. 1929, provides as follows:

"The county treasurer shall keep his office at the county seat of the county for which he was elected, and shall attend the same during the usual business hours. The county court shall provide said county treasurer with suitable rooms, and a secure vault in the courthouse or other building occupied by other county officers, and the county treasurer shall keep his office and records in such rooms and vault provided by the county court. He shall receive all moneys payable into the county treasury, and disburse the same on warrants drawn by order of the county court."

Section 12149, R. S. Mo. 1929, provides as follows:

"He shall make duplicate receipts in favor of the proper person, for all moneys paid into the treasury, and keep the books, papers and moneys pertaining to his office at all times ready for the inspection of the court, or any judge thereof."

Section 12153, R. S. Mo. 1929, provides as follows:

"All collectors, sheriffs, marshals, clerks, constables and other persons chargeable with moneys belonging to any county shall render their accounts to and settle with the county court at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county court within five days thereafter."

It is true that our courts have never construed the above statutes in determining the duty of a County Treasurer to receive "all money payable into the county treasury," and when receiving the same our courts have never construed the phrase, "proper person", when applying the above Statute requiring the Treasurer to "make duplicate receipts in favor of the proper person, for all moneys paid into the treasury."

On the other hand the duty to receive money and issue duplicate receipts does not require the County Treasurer to act in a judicial capacity every time he is tendered money which the party tendering asserts to belong to the county. It is not for the treasurer to question whether such money tendered is at all events properly payable into the county treasury, nor is it for him to judicially determine, before accepting same, that it is being tendered by the "proper person". The County Treasurer is but an administration officer and when he has followed the Statute literally, he has sufficiently exercised his duty. When the person tendering money to him asserts that he is tendering money which is payable into the County Treasury, the County Treasurer must assume that it is being tendered by the proper person.

The fact that all persons chargeable with moneys belonging to the County have a prior duty to render this account to and settle with the County Court does not impose any duty on the County Treasurer to see to it that those who tender him money have complied with their duty to account and settle with the County Court. Because someone else has failed to do their duty, do not excuse the County Treasurer from following the Statute and doing his duty.

Our Supreme Court in the case of County v. Dallmeyer, 101 Mo. 57; 13 S. W. 687 l. c. 689, which was a case where the County Treasurer took it upon himself to receipt the retiring County Treasurer's executor for money received in settlement and on said receipt he included the following phrase, "being in payment of the following balances found due the following funds", said:

"Although this receipt professes to be a receipt in full for the balance due the interest fund, still it shows the exact amount paid on that fund, and if

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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."

It is true that it is the duty of your County Collector to pay to you as County Treasurer, the balance due the county, after settling with the County Court, but the law does not require you to give a receipt in full. You can give duplicate receipts in the amount to the person tendering the money, and the receipt may show that it is for an amount which the person tendering claims that he owes the county. The law does not state that you must receipt him "in full" or "for balance due", and any such notations are rebuttable if the county seeks to recover any balance due.

CONCLUSION.

Whenever the alleged County Collector or any other person offers you, as County Treasurer, money which he claims to be due the County, it is your duty to take it, and to issue said person duplicate receipts in said amount.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:



(Acting)
Attorney General

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