COUNTY COLLECTOR: Compensation under Subdivision XIV, Section 9935 R. S. Mo. 1929 for back tax collections.

10-23

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Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

My Dear Mr. Smith:

On the 16th of November, 1933, you requested of this office an opinion respecting the interpretation of Subdivision XIV of Section 9935 R. S. Mo. 1929. On November 18, 1933, this office rendered an opinion to you wherein it was held that the collector was not entitled to retain a deductible commission on back tax collections in counties falling within the fourteenth subdivision of that Section. Since that opinion was issued this office has been favored with briefs on the point. Additional facts have also been disclosed. In view of this additional information and of the equities of the situation, we have reconsidered this matter and hereby withdraw the opinion dated November 18, 1933, and submit the following as the opinion of this office on the subject. Your request reads as follows:

> "Section 9935, R. S. Mo. 1929, and the same Section as amended by the 1933 Laws of Missouri on page 454 of the 1933 Session Acts establishes by classes the amount of commission for the various County Collectors of the State.
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> Class one to thirteen inclusive establishes this commission upon 'the total amount of all such taxes and licenses levied for any one year.'
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> Class fourteen classifies the Collector's commission in an entirely different manner wherein it allows a prescribed commission first on current and tax revenues, second on licenses and all other dues wherein it states that the two afore mentioned commissions on tax classes 'shall be deducted and retained by such Collector out of the amounts collected,' then it precedes to the third tax class which establishes the Collector's Commission 'on all back taxes and all other delinquent taxes'* * * *which shall

be added to the face of the tax bills and collected from the party paying such tax."

We would like to have an opinion from your department advising us if this 2% allowed on back tax collections which is taxed as costs constitutes the total commission allowed the Collector on these back tax collections or is he entitled to also retain a deductable commission ona basis as established by the first mentioned tax class."

Section 9935 is what may be termed a general law, classifying the counties of the state into fourteen subdivisions for the purpose of determining the rate of compensation to be paid to county collectors. This Section was amended by the 57th General Assembly, and a new section is found at page 454, Laws of Missouri, 1933, but no change was made which is material to your inquiry. A portion of Subdivision XIV reads 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: On current and tax revenues, as follows: On all sums collected up to and including eighty per cent. of the total amount of such tax bills placed in his hands, one-half of one per cent. commission; on all sums collected over eighty per cent., and up to and including ninety-five per cent one per cent commission; on all sums collected over ninety-five per cent., two per cent commission. On licenses and all other dues, except delinquent and back taxes, collected in any one year as follows: When the amount collected for the city or county aggregates eight hundred thousand dollars or less, two (and) one-half per cent. commission; on all licenses and other dues collected for the city or county in excess of eight hundred thousand dollars, four per cent commission; on all such licenses collected for the state, three per cent commission. All such commissions hereinbefore enumerated shall be deducted and retained by such collector out of the amounts collected for state, school, county and city, respectfully, 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.* * * *"

Thus the collector of revenue in counties falling within that classification are allowed a deductible commission ranging from one-half of one per cent to two per cent on current tax revenues, and a penalty commission of two per cent on back taxes which is to be added to the face of the tax bill and collected from the party paying the same. The problem to be determined is whether or not a deductible commission is allowable in addition to the penalty commission for the collection of back taxes. We are unable to find any reported cases wherein this issue has been determined. The first thirteen subdivisions of this Section, which deal with smaller counties, have on occasion been before our courts. The most enlightning case upon this issue is that of State ex rel. Shannon County vs. Hawkins, 169 Mo. 615. The issue in that case was whether the deductible commission allowable under Subdivision V was to be paid in addition to the back tax or penalty commission payable under what is now Section 9935 R. S. Mo. 1929. Subdivision V, together with the opening paragraph of this Section, read 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:
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> * * * * * * * * * * * * * *
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> V. In all counties wherein the total amount of all such taxes and licenses levied for any one year exceeds twenty-five thousand dollars and is less than forty thousand dollars, a commission of six per cent. on the first twenty-five thousand dollars collected and three and one-third per cent. on whatever amount may be collected over twenty-five thousand dollars."

Section 9969, a part of the Article on delinquent and back taxes, at that time read in part 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." * * *"

Shannon County took the position that the phrase "except back taxes" excluded the collector from any compensation under the provisions of Section 9935 upon the collection of back taxes--proceeding upon the theory that the deductible commission thereby allowed was only payable on current taxes and that the compensation allowed by Section 9969 was the only commission payable on delinquent taxes. The Court, in construing what are now Sections 9935 and 9969 stated, page 620:

> "* * * "It seems to us that section 9260 deals alone with the commissions to be retained by the collector out of revenues collected. Section 9309 deals with the costs allowed him for his extra services in addition to his commissions, and these are to be paid by the delinquent," * *"

The decision of the Court was that the deductible commission allowed by the first thirteen subdivisions of Section 9935 should also be allowed on all back taxes collected, and should be in addition to the four per cent penalty allowed to the collector by Section 9969. In arriving at this conclusion, the Court stated, l. c. 621:

> "Another reason suggested by counsel for defendant is quite persuasive, and it is this: the state and county allow the collector commissions at different rates of per cent in proportion to the amount collected, and this merely for receiving and paying over the taxes, but when we come to these costs and fees, they are at the same rate, whether the amount is one thousand dollars or one million--which we think demonstrates that this fee is allowed for extra labor and not in lieu of that commission which the State has agreed to allow her collectors out of all taxes which they collect, whether current or back taxes.

> So far as the State is concerned, she pays no more and no less on either kind, but she visits upon the delinquent a penalty and allows that in addition to the collector who must necessarily render extra services.* * * *"

This must be considered as a judicial interpretation of the legislative intent in the enactment of this law. All subdivisions of this Section including the one under consideration allow a deductible commission, the amount of which varies with the amount of taxes collected. This deductible commission has been construed by the foregoing decision as compensation for "receiving and paying over the taxes," but the penalty commission which is a set amount regardless of the amount collected "is allowed for extra labor and not in lieu of that commission which the state has agreed to allow her collectors out of the taxes which they collect." This being the apparent theory upon which the legislature operated, the words and phrases used in Subdivision XIV should be construed to harmonize with and further this legislative intent. It is not clear from the wording of Subdivision XIV that the two per cent commission allowed on back taxes is to be in addition to the deductible commission allowed on current taxes. In this Section we have some fifteen subdivisions, each of which are as much a part of the Section as are the various sections a part of the article. Each must be considered in determining the legislative theory behind the whole enactment, and each must be given a consistent construction thereto. It has been determined that it was the legislative intent, in the passage of the first thirteen subdivisions, that the deductible commission be allowed in addition to the penalty commission. The logic of the Hawkins case, supra, is applicable alike to all subdivisions, and as that legislative intent has been shown to exist in respect to the first thirteen paragraphs we must conclude that the fourteenth subdivision is imbued with the same plan. There would be no reason or logic in holding that the collectors of the other thirteen subdivisions would be entitled to the deductible commission and holding that the collectors of the counties falling within the fourteenth subdivision should be deprived of this compensation.

We believe the decision in the case of Glaser vs. Rothechild, 221 Mo. 180, is applicable to the instant case. The plaintiff Glaser instituted an action for damages against the defendant, alleging that he had fallen into an open pit in the basement of defendant's building; that the defendant was negligent in failing to protect said pit with a guard rail which was required to be maintained by virtue of the provisions of Section 5 of an Act of 1881 entitled

> "Inspection: Health and Safety of Employees. An Act relating to manufacturing mechanical, mercantile and other establishments and places, and the employment, safety, health and work hours of employees."

Plaintiff was not an employee, but as the Court held, a mere licensee. Defendant took the position that the act referred to was only for the protection of employees and that therefore plaintiff could not take advantage of the requirement respecting the guard rail. Plaintiff to further the contention that the act afforded protection to all persons also referred to Section XIX of the Act which provided that scaffolds should be constructed so as to

> "insure the safety of persons working thereon, or passing under or about the same, against the falling thereof or the falling of such materials or articles as may be used, placed or deposited thereon. All persons engaged in the erection etc. of any building shall exercise due caution and fear so as to prevent injury or accident to those at work or nearby."

In reply to this contention the Court stated, l. c. 211:

> "The wording of this section is general, and if read in its literal sense it is broad and comprehensive enough to embrace all persons who are at work upon the building, and also all persons who might be 'near by' whether working or not; but when we read this section in connection with the entire act, as we did section 5, then we are of the opinion that the persons referred to by the words 'all persons who might be near by' mean all employees who might be near by.* * * * *"

The decision of the Court was that the phraseology of Sections 5 and 19 of the Act were to be limited in their operation because the other sections of the act clearly indicated that it was to deal exclusively with employees and the safety thereof. It was accordingly found that there was no liability to the Plaintiff because of defendant's failure to comply with Section 5 of the act. In the courts of the opinion this statement was made, page 212:

> "* * *The authorities hold that a statute should not be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws. It is not to be expected that a statute which takes its place in a general system of jurisprudence shall be so perfect as to require no support from the rules and statutes of the system of which it becomes a part, or so clear in all its terms as to finish in itself all the light needed for its construction.* * * **"

In the instant case we have a direct application of this rule. The first thirteen subdivisions of Section 9935, show an evident intent to allow a deductible commission in addition to the penalty commission for the collection of back taxes. They have been so construed by the courts. It was the general scheme to allow collectors a deductible commission plus a penalty commission for the collection of back taxes. We must therefore construe the general phraseology of Subdivision XIV so as to consummate this plan of compensation. That the intent of the legislature in this matter was correctly conceived in the Hawkins case supra, cannot be doubted, the re-enactment by the legislature of these same provisions without any change or amendment gives gives legislative approval of the interpretation given by the Courts. Section 9935 R. S. Mo. 1929, was repealed and a new section by the same number was enacted by the 57th General Assembly in regular session. (Page 454 Laws of Missouri, 1933) It is to be noted that the first thirteen subdivisions of this Section were re-enacted without any change and that subdivisionXIV has been re-enacted without any change to the part herein considered. By the re-enactment of this law the legislature has given its approval to the construction given the law bythe Court. This rule is well recognized and is generally stated in State vs. Schenk, 238 Mo. 429, l. c. 455:

"We regard as significant the fact that notwithstanding the construction which has been put upon these laws by the decisions of this court referred to; by the acts of the various Governors making appointments, and by the certificates contained in the official publication of the session acts, the Legislature, in 1909, adopted the same phraseology in the declaratory act and also inthe general act concerning the time when laws should go into effect. According to the ordinary rules of construction, it must be held that the Legislature re-enacted these laws with the construction which had been so placed upon them.* * * *"

A word should possibly be said as to the construction placed upon this section by the persons charged with duties under the law. While it is true that for a number of years the Collector of the City of St.Louis has not retained any "deductible" commission on "back taxes", we find that for a period of many years the Collector of Jackson County has retained such commissions. In view of such conflicting precedent, we are of the opinion that "executive construction" cannot be considered in determining the issue here involved.

C O N C L U S I O N

It is therefore the opinion of this office that Collectors in counties falling wihtin Subdivision XIV of Section 9935 R. S. Mo. 1929, are entitled to retain the deductible commission therein set up in addition to the penalty commission allowed on back taxes which is added to the tax bill and collected from the taxpayer.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
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