

COUNTY TREASURER - Compensation for disbursing school moneys.

March 8, 1935. 3-14

Mr. E. S. Clatterback,  
Treasurer of Callaway County,  
Fulton, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of January 11, 1935, such request being in the following terms:

"I am writing you for your interpretation of Section 9256 on page 2536 Rev. Stat. 1929 Vol. 2. The Co. Treas. shall be allowed such compensation for his services as the Co. Court may deem advisable, not to exceed one-half of one percent of all school moneys disbursed by him. This is the part I want your opinion on. If the Treas. is getting a stated salary is he entitled to the per cent on the school moneys he disburses with out the vote of the County Court? or do they set his salary and if there is nothing stated in regard to the school money is he entitled to get a per cent,? It seem that he is entitled to some thing for the disbursement of this fund not to exceed the one-half of one per cent and the court has the right to say what that shall be, but do they have a right to cut this out all together?"

Please let me hear from you in regard to this matter by Monday Jan. 14th. for this means a great deal to me, and I will meet the new Court to take this matter up with them at that time."

R. J. Missouri, 1929, Section 12138, which governs the compensation of county treasurers, provides as follows:

"Unless otherwise provided by law, the county court shall allow the treasurer for his services under this article such compensation as may be deemed just and reasonable, and cause warrants to be drawn therefor."

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That part of R. S. Missouri, 1929, Section 2266, which relates to the compensation of county treasurers for handling school moneys is as follows:

" \* \* \* and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him, and to be paid out of the county treasury."

From these two statutes it is apparent that the compensation of a county treasurer is left largely in the discretion of the county court, both as to regular salary and as to compensation for handling school moneys. If there were any doubt about this discretion, it would be resolved by the case of State ex rel. Dietrich v. Daves, 318 Mo. 701, 287 S.W. 430 (1926) in which the Court, discussing the power of a county court under what is now Section 12132, quoted above, said:

"It requires no citation of authority to show that the power to prescribe a salary as an incident to a public office is purely legislative in character. That power as respects the office of county treasurer the Legislature has delegated to the county court, the agency most familiar with the fiscal affairs and financial condition of the county, as well as the services required to be performed by the treasurer-which may vary in different counties and at different times in the same county. The only limitation upon the power is that the compensation allowed thereunder be such as may be deemed just and reasonable. What is just and reasonable in a given case is committed to the discretion of the county court and to it only. Its action in the exercise of that discretion is not subject to judicial review, for the simple reason that neither the statute which confers the discretion nor any other makes it so."

In the case of Sanderson v. Pike County, 125 Mo. 598, 93 S.W. 942 (1906) a county treasurer claimed that he was entitled to compensation for handling and disbursing school moneys to the extent of one-half of one percent of such moneys going through his hands, under the provisions of what is now R. S.

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Missouri, 1929, Section 9286, quoted above, even though the county court had not made any order fixing his compensation with respect to such school moneys. The Court held that he was not so entitled and in the course of its opinion said:

"This suit was brought upon the theory that under the provisions of section 9249, supra, the plaintiff was entitled to 'one-half of one per cent of all school moneys disbursed by him,' when, in fact, he was only entitled 'to such compensation for his services as the county court may deem advisable,' not exceeding that amount."

In 1933 a new Act was passed relating to the consolidation of offices of treasurer and collector in certain counties (Laws of 1933, page 336), in which Section 12130, quoted supra, was repealed and a new section enacted in lieu thereof. Other sections of Article 8 of Chapter 85 of R. S. Missouri, 1929, which relate to county treasurers were likewise repealed and new sections enacted in lieu thereof, as well as additional new sections, the effect of which in part was to consolidate the offices of the treasurer and collector in counties having under 40,000 inhabitants and not having township organization, under which classification Callaway County is included. Such new Act provides (Section 12132a) that in such counties the county collector shall perform the duties of county treasurer without receiving any additional compensation therefor, and therefore the new Section 12130 is not to be applicable to counties such as Callaway. However, the new statutory scheme enacted in 1933 is not to become effective until after the 1936 elections, as is specifically provided in the new Sections 12130 and 12132a, and therefore Section 12130 in the form in which it is found in the revised statutes of 1929 would remain operative until the sections to which the new section 12130 is linked, become operative, and therefore, for the purpose of your inquiry, the Act of 1933 may be disregarded, and need not be considered until after the 1936 elections.

In conclusion, it is our opinion that a county treasurer in a county having under 40,000 inhabitants and not under township organization, until after the 1936 general elections, is entitled to no compensation in addition to his salary on account of school moneys disbursed by him, in the absence of an order fixing some compensation on that account made by the county court, and that if the county court does make such an order, the amount of

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compensation for such services is left to the discretion of the county court, provided it does not exceed one-half of one percent of all school moneys disbursed by such county treasurer.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney-General

APPROVED:

ROY McKITTRICK  
Attorney-General