

COUNTY COLLECTOR: County collector must pay direct to treasurer of City, Town or Consolidated District, moneys collected by him to which said district is entitled.

6-12

June 7, 1935.

Hon. Nat B. Rieger
Prosecuting Attorney
Adair County
Kirksville, Missouri



Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office which reads as follows:

"I would like to have an official opinion from your department on this question, 'Is it mandatory that the County Collector shall turn all school collections, including monies due the treasurers of Town, City and Consolidated School Districts, to the County Treasurer, in a county not under the Township Organization Law, or is the County Collector privileged to pay such monies direct the treasurers of town, city and consolidates school districts entitled to receive same.' This question arises under Sec. 9266 R. S. Mo. 1929.

"I should also like to have a copy of the opinion, if one is already written concerning the legality of the so-called "Cash Nights" or "Bank Nights" conducted by moving picture houses, during which cash prizes are given to the holder of a number drawn, all patrons being given registration upon the purchase of one ticket."

County collector must pay over to the treasurer of the Board of Education of a city, town or consolidated district all moneys collected by him to which said board is entitled.

Article 2, Chapter 57, R. S. Mo. 1929, relates to all classes of schools. Section 9264 of said article reads as follows:

"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 collectors for collecting other taxes; and he shall pay over monthly, to the county treasurer, all such taxes collected and take his receipt therefor."

Section 9266 of the same Article provides in part:

"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. ****"

Article 4 of Chapter 57, R. S. Mo. 1929, contains the law applicable to city, town and consolidated schools.

Section 9340 of said article reads as follows:

"The county or township collector shall pay over to the treasurer of said board of 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. "

A history of the above sections shows that Sections 9264 and 9266 were first enacted in 1874 (Laws of Missouri

1874, page 162). Section 9340 was not enacted until 1879 (Laws of Missouri, 1879, page 409.)

It is a well recognized principle of law that where there are two statutes relating to the same subject, one general in its terms and the other specially applicable to the particular subject, the special statute will prevail over the general one especially where the special statute was enacted subject to the general.

In the case of *Gilkeson v. Railroad*, 222 Mo. loc. cit. 204, 205, the Court said:

"**** Where there are two statutes and the provisions of one apply specially to a particular subject, which clearly includes the matter in question, and the other general in its terms, and such that if standing alone it would include the same matter, and thus conflict with each other, then the former act must be taken as constituting an exception, if not a repeal of the latter or general statute, and especially is this true where the special statute was enacted subsequent to the passage of the general. This rule of statutory construction is well grounded in our jurisprudence, as is shown by the following adjudications: *Ruschenberg v. Railroad*, 161 Mo. 70; *State ex rel. v. Dabbs*, 182 Mo. 1. c. 366; *State ex rel. v. Frazier*, 98 Mo. 426; *State ex rel. v. Slover*, 134 Mo. 1. c. 19."

In *State v. Brown*, 68 S. W. (2d) loc. cit. 59, Judge Atwood, speaking for the court said:

"It will be observed that section 4556, except the last proviso which is not pertinent to the matter here in controversy, relates to corporations in general, while section 5613 relates only to a particular class of corporations, to wit, building and loan associations. In such case the rule applicable is that 'where there is one statute dealing with a subject in 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; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication." Tevis et al. v. Foley, 325 Mo. 1050, 1054, 30 S. W. (2d) 68, 69; State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 626, 247 S. W. 129; State ex inf. Barrett v. Imhoff, 291 Mo. 603, 617, 238 S. W. 122. If there be any repugnancy between these two statutes, the general statute, section 4556, must yield to the special statute, section 5613."

In view of the above, it is the opinion of this department that Section 9340, supra, which relates specially to city, town and consolidated district would prevail over the provisions of Sections 9264 and 9266 which relate to schools generally; and, therefore, the county collector must pay over to the treasurer of the board of education of a city, town and consolidated district all moneys received and collected by him to which said board is entitled at least once in every month.

"Bank Night".

As per your request, I am enclosing a copy of an opinion given by this office to Honorable J. C. McDowell under date of March 27, 1935, same having been written by Franklin E. Reagan, Assistant Attorney-General and approved by Attorney-General Roy McKittrick.

Yours very truly,

APPROVED:

J. E. TAYLOR
Assistant Attorney-General.

JOHN W. HOFFMAN, Jr.
(Acting) Attorney-General.

JET/afj