

COUNTY COLLECTORS, EX OFFICIO TREASURER-

Entitled to no expenses in addition to maximum allowance under first 13 subdivisions of Sec. 9935 Laws of Missouri 1933.

1-14
January 9, 1935.



Hon. James S. Rooney
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Mr. Rooney:

We have your request for an opinion of this office upon the following propositions:

"Will the collector be entitled to any additional compensation for deputy hire when he assumes the duties of the treasurer's office?"

Is the collector allowed any of the following in excess of the \$5500.00: the two per cent commission collected on delinquent taxes, commission on utility and merchants and manufacturers taxes, or the fees allowed under Senate Bill 94 for reparing and selling of back taxes.

Is the collector required to pay all deputies salaries and buy a bond out of the \$5500.00?"

I.

COLLECTOR AS EX OFFICIO
TREASURER ENTITLED TO NO
ADDITIONAL COMPENSATION FOR
DEPUTY HIRE.

The occasion for this problem arising is undoubtedly due to the enactment of Senate Bill 76 by the 57th General Assembly in regular session. This law is found at page 338 Laws of Missouri 1933, and consolidates the offices of County Collector and County Treasurer in counties having less than 40,000 inhabitants. Because of these additional duties placed upon the County Collector the question has presented itself as to whether or not he will be

permitted an extra allowance for the hire of a deputy to perform these additional duties. Section 12132A, a part of said Senate Bill 76, reads as follows:

"On and after the expiration of the term of office of the county treasurer on the 31st day of December, 1936, in all counties of this state which now or hereafter have a population of less than 40,000 inhabitants according to the last decennial United States census and not under township organization, the county collector shall take over all the duties now performed by the county treasurer and such collector shall be county collector and ex officio county treasurer and shall perform any and all duties now devolving upon the county collector and county treasurer. Such collector shall act as ex officio treasurer and perform the duties attached thereto with no additional remuneration other than such moneys as are allowed by law for his services as county collector, and he shall not be required to give any bond other than the bond given as county collector. All duties and obligations now imposed by law upon county treasurers in counties having a population of less than 40,000 inhabitants according to the last decennial United States census are hereby set over and made a part of the duties and obligations of the ex officio county treasurer as provided for in section 12132a."

By virtue of the foregoing underlined phrase the Legislature has definitely and clearly provided that the County Collector is to receive no remuneration because of the additional duties imposed upon him ^{than is} allowed to him by the law applying to county collectors.

CONCLUSION.

It is therefore our opinion that the county collector is not entitled to an additional allowance for deputy hire to perform additional duties imposed upon him because of the consolidation of the offices of County Treasurer and County Collector in counties of less than 40,000 inhabitants.

II.

COUNTY COLLECTOR AS EX OFFICIO TREASURER IS NOT ENTITLED TO 3% DELINQUENT TAX COMMISSION, COMMISSION ON UTILITY, MERCHANTS AND MANUFACTURERS TAX ON FEES ALLOWED UNDER SENATE BILL 94 IN EXCESS OF THE \$5500.00 MAXIMUM COMPENSATION ALLOWED FOR COLLECTORS OF COUNTIES FALLING WITHIN SUBDIVISION 13 OF SECTION 9935 PAGE 454 LAWS OF MISSOURI 1933.

Section 9935, page 454, Laws of Missouri 1933, is a re-enactment of Section 9935 R. S. Mo. 1929, with material changes in Subdivision 15 thereof. Under the 1929 section the maximum allowed any collector to be retained for commissions and fees for any one year in counties falling within the first thirteen subdivisions of said section was \$9000.00. This maximum figure was changed and the maximum allowed the county collector of counties falling within subdivision thirteen of the section was reduced to \$5500.00. This phrase was also placed in the new Section 9935:

"Provided, that the limitation on the amount to be retained as herein provided shall apply to fees and commissions on current, back and delinquent taxes, but shall not apply to commissions on the collection of ditch and levee taxes" * * *

It therefore appears that \$5500.00 is the maximum which is to be permitted to be retained for services rendered in the collection of current, delinquent and back taxes. This phrase would include delinquent taxes and commissions on utilities, merchants and manufacturers taxes and fees allowed under Senate Bill 94. The apparent exception to this maximum is the 1% allowed to the County Collector for the collection of levee and drainage assessments which the collector is allowed to collect and retain in addition to the \$5500.00 maximum.

CONCLUSION.

It is therefore our opinion that the County Collector is not to be allowed 3% commission on delinquent taxes, commissions on utilities, merchants and manufacturers taxes or fees allowed under Senate Bill 94 in excess of \$5500.00 in counties falling within Subdivision 13 of Section 9935, but that all such commissions in excess of the stated sums must be accounted for and turned over by the Collector.

III.

COUNTY COLLECTOR MUST PAY
DEPUTIES AND BOND PREMIUM
OUT OF MAXIMUM ALLOWANCE.

The Legislature in its reenactment of Section 9935 supra, did not change the general method or scheme for the conduct of the collectors office or for his compensation. The material change that we are concerned with was that the Legislature struck out the following phrase of subdivision 15 of Section 9935 Laws of Missouri 1929:

"That no collector shall be allowed to retain over \$9000.00 of commissions and fees in any one year except as provided in Subdivision 14 herein."

And substituted the following schedule:

"That no collector except as provided in subdivision fourteen herein, shall be allowed to retain commissions and fees in any one year in excess of the following amounts: in any county coming within the provisions of subdivisions one to seven, inclusive, hereof not more than \$2500.00; in any county coming within the provisions of subdivision eight, not more than \$3000.00; in any county coming within the provisions of subdivision nine, not more than \$3500.00; in any county coming within the provision of subdivision ten, not more than \$4000.00; in any county coming within the provisions of subdivision eleven, not more than \$4500.00; in any county coming within the provisions of subdivision twelve, not more than \$5000.00; in any county coming within the provisions of subdivision thirteen, not more than \$5500.00; * * *

The effect of this was to scale down the maximum compensation allowed to the various county collectors depending upon the amount of taxes required to be collected, but did not change the law in respect to the expenses which the county collector was required to pay out of the commissions allowed him by law. The law in respect to this matter is as it was prior to the action of the 57th General Assembly. In those counties in which the collector in the past paid his deputy hire and bond expense from his commissions, he is still required to bear those expenses from the commissions and fees

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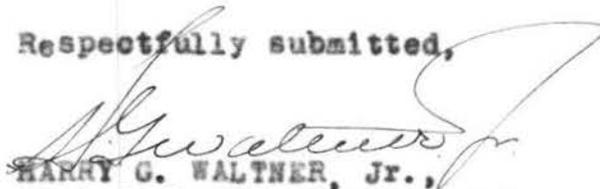
allowed, and must pay them out of the amount allowed to be retained by him.

CONCLUSION.

It is therefore our opinion that the County Collector is required to pay deputy hire and bond expenses out of the maximum amount of commissions and fees allowed to be retained by him.

We are not unmindful of House Bill 84 of the 57th General Assembly in Extra Session, found at page 104 Laws of Missouri, Extra Session 1933-34. This act applies only to counties having a population of not less than 50,000 nor more than 80,000 inhabitants, and materially changed the compensation of the collector in such counties. However, this law is not applicable to Clay County and therefore we have not discussed it in this opinion.

Respectfully submitted,


HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.

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