

COUNTY COLLECTOR: Should pay balances due on annual settlement

Liable for penalty of 10% per month until paid. When.

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July 20, 1936

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Mr. N. Elmer Butler  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Sir:

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

"Will you please give me an opinion on the following: In the matter of annual settlement of the County Collector -- when the settlement is made according to law and accepted by the County Court, when does it become necessary for the Collector to pay the balance due the County?"

"If the balance should be paid at the time of making settlement, is the Collector liable for ten per cent each month until paid?"

"Will you please rush me an opinion on this matter."

Section 9918, Revised Statutes Missouri 1929, requires the county collector to make an annual settlement with the county court at the term of the county court to be held on the first Monday in March.

Section 9932, Revised Statutes Missouri 1929, provides that the collector having made settlement, according to law, of county revenue by him received shall pay the amount due into the county treasury. Said section reads as follows:

"Every collector of the revenue having made settlement, according to law, of county revenue by him collected or received, shall pay the amount found due into the county treasury, and the treasurer shall give him duplicate receipts therefor, one of which shall be filed in the office of the clerk of the county court, who shall grant him full quietus under the seal of the court."

Section 9933, Revised Statutes Missouri 1929, provides a penalty on the collector for failing to make payment of the amount due from him on settlement. Said section reads as follows:

"Every collector who shall fail to make payment of the amount due from him on settlement, or in the time and manner prescribed by law, shall forfeit ten per cent. a month on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid until actual payment. This section shall apply to all revenue collections made by him, whether for state, county, city, town, district or school taxes, general or special."

Section 9934, Revised Statutes Missouri 1929, provides a method of proceedings against a defaulting collector and his sureties. Said section reads as follows:

"If any collector shall fail to pay into the county or state treasury the amount of taxes or revenue by him collected, due the state or county, respectively, at the times and in the manner by this chapter required, he and his sureties shall be liable

to pay ten per cent. per month upon the amount which he shall so fail to pay, as a penalty; and in case of such refusal, notice may be served upon such collector in default and his sureties, informing them that at the next term of the circuit court of the county a motion will be made to said court for a judgment against such collector and his sureties, for all sums of money due from him to the state or county, as the case may be, at time of making such motion, together with the penalty aforesaid. The circuit courts of this state are hereby vested with power and jurisdiction to hear and determine all such motions and proceedings at the first term at which such motions may be made. The judgments rendered by the court under the provisions of this section shall have the same force and effect, and be enforced in the same manner, that other judgments in the circuit courts of this state are enforced. Proceedings under this section shall be in the name of the state or county, as the case may be. Such notice may be served by any constable, coroner, or other person who would be a competent witness, and shall be served at least five days before the motion is made. The court shall have power to compel the production of all books, papers, records and other documents in the possession of the collector or others, to be used as evidence in the cause."

Section 9927, Revised Statutes Missouri 1929, requires every county collector, on or before the 5th day of each month, to file with the county clerk a detailed statement verified by affidavit of all state, county, school, road and municipal taxes and of all licenses by him collected

during the preceding month and to pay the same, less his commissions, on or before the 15th day of the month into the state and county treasuries, respectively. Said section reads:

"Every county collector and ex officio county collector, except in the city of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same, less his commissions, into the state and county treasuries, respectively. It shall be the duty of the county clerk, and he is hereby required, to forward immediately a certified copy of such detailed statement to the state auditor, who shall keep an account of the state taxes with the collector."

In the case of State v. Sanderson 77 S. W. (2d) 1. c. 96, the Court, in construing the above and other pertinent sections, said:

"It will be noted that the section quoted refers to a failure of the collector to pay the amount due from him on settlement. What is meant by settlement can be easily understood when sections 9918 to 9922, inclusive, are read (Mo. St. Ann. Secs. 9918 to 9922, pp. 7969, 7970). In brief, these sections provide that the collector shall make an annual settlement with the county court. The county court is required, before approving a

settlement, to make special inquiry and be fully satisfied that the collector has used due diligence in making collections. It is also required to fully examine the settlement offered by the collector before approving same. If the settlement be approved, the law requires it to be made a matter of record and a copy thereof certified to the state auditor. The collector is also required, under Section 9927 (Mo. St. Ann. sec. 9927, p. 7972), to make monthly reports to the county court of all collections made and to pay the amounts due the state and county on or before the fifteenth of each month. It will be noted that the county clerk is required to forward a certified copy of these reports to the state auditor."

As to your second question as to whether the collector is liable for ten per cent each month until the balance found due on the annual settlement is paid, we think the case of State v. Sanderson, supra, is decisive.

In the above case, at l. c. page 97, the Court said:

"The record in this case is silent on the question, but we may presume that the county court of Pike county performed its statutory duty and fully examined the settlements offered by the collector before approving them. We may infer from the record that Sanderson paid in full all amounts due as shown by those settlements. If this were a case where the collector failed to pay the full amount shown to be due from him by monthly reports or

annual settlements, or if this were a case where the collector had intentionally filed false returns and settlements and withheld funds belonging to the state and county, a statutory penalty could be rightly imposed. It is, however, a cardinal rule of law that penal statutes must be strictly construed. This, of course, is a penal statute. It would require a most liberal construction of the statute to impose the penalty sought in this case upon a collector, under the circumstances as shown by the record."

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"Under the authorities cited and the statute, we hold that in this case the only theory upon which the collector could be held liable is that due to a mistake of fact and not of law the collector failed to pay the county and state all sums due them. No section of the revenue act imposes a penalty upon a collector for an honest mistake of this kind. The wording of section 9933 clearly indicates that the penalty therein prescribed cannot be imposed in this case."

CONCLUSION

In view of all the above, it is the opinion of this department that a county collector should pay to the county treasurer all state, county, school, road and municipal taxes and all licenses by him collected during the preceding month, less his commissions, on or before the 15th day of each month, and, if, on annual settlement with the county, there is found to be any money due the county it is his duty to pay the amount found due.

Mr. N. Elmer Butler

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It is our further opinion that if the collector fails to pay the amount shown to be due from him by the annual settlement, or if the collector intentionally makes a false settlement and withholds funds belonging to the county, he will be liable for the statutory penalty of ten per cent a month on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid until actual payment.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED@

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

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