

COUNTY COLLECTOR*) In counties less than 40,000 inhabitants
EX OFFICIO TREASURER:) and not under township organization,
collector must perform all duties on
January 1, 1937, formerly required of county
treasurer.

12-21
December 19, 1936.



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

Dear Sir:

This is to acknowledge your letter as follows:

"Will you please give me an opinion
on the following:

"Is it compulsory that the Collector
take over the office of the County
Treasurer on January 1, 1937. In
counties that come the consolidation
law.

"If Collector is enjoined from taking
over the office of Treasurer does he
pay any money to the present Treasurer."

Stone County has a population of 11,614 inhabi-
tants according to the last United States Decennial Census,
and is not under township organization. Official Manual,
State of Missouri, 1935-36.

In 1933 the 57th General Assembly abolished the
office of county treasurer in counties such as Stone County
by repealing Section 12130, R. S. Mo. 1929. In 1933 (Laws
of Missouri, 1933, page 338, Section 12132a) the Legislature
made it mandatory upon the collectors to act as "ex officio
county treasurer" and provided that said county collectors
should perform any and all duties then devolving upon the
county collector and county treasurer. Section 12132a, supra
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."

From the above section it is seen that after the 31st day of December, 1936, there will be no office of county treasurer in Stone County. Consequently, no office being in existence no person could act as an officer either de facto or de jure. Ex parte Snyder, 64 Mo. 58.

While Section 12132a, supra, specifically prohibits additional remuneration of the county collector by virtue of him taking over the office and being ex officio treasurer, yet such fact would not be an excuse for the county collector to fail to perform the duties entailed by virtue of Section 12132a, supra. It is well settled that a public officer is

only entitled to fees if the statute gives them to him, and, failure of statute to provide for fees for services, the officer is required to perform the services and such has no claim on the State for compensation therefor. *Gannon v. Lafayette County*, 76 Mo. 675; *Williams v. Chariton County*, 85 Mo. 645; *State ex rel. Chapman v. Walbridge*, 153 Mo. 194.

If the county collector fails or refuses to comply with the provisions of Section 12132a, supra, in that he will not act and perform all the duties now devolving upon the county treasurer, such collector would be subject to ouster.

In *Bakersfield News v. Ozark County*, 92 S. W. (2d) 603, the Supreme Court of Missouri said (p. 605):

"If a public officer fails to perform mandatory ministerial duties, he may be compelled to do so by mandamus. If he 'be guilty of any willful or fraudulent violation or neglect of any official duty' (Mo. St. Ann. Sec. 11202, p. 6143), he may be removed from office by the method provided in sections 11202-11209 R. S. 1929 (Mo. St. Ann. Secs. 11202-11209, pp. 6143-6146)"

From the above it is our opinion that it is compulsory and mandatory that the collector take over and assume and perform any and all duties now devolving upon the county treasurer. The time for taking over the duties by the collector as ex officio treasurer will be January 1, 1937.

In answer to your question, "If Collector is enjoined from taking over the office of Treasurer does he pay any money to the present Treasurer?" we respectfully decline to comment, as our opinion would be governed solely by the terms of the injunction, which we do not have before us. Suffice it to say that the collector would greatly jeopardize and prejudice the provisions of his bond even if he did comply with an injunction issued by the circuit court requiring him to pay

Hon. N. Elmer Butler

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all moneys over to the present treasurer. We do not believe the court would issue such a decree.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

JLH:EG