

COUNTY TREASURER: Receives commission as custodian of school funds out of general revenue fund of the county treasury.

October 15, 1936.

Mr. Roscoe Claycomb,
Clerk of the County Court,
Carthage, Missouri.

Dear Sir:

This department wishes to acknowledge your letter of October 10th, wherein you state as follows:

"It is our understanding that there is some variance in the different counties in the state as to the method of paying the County Treasurer his commissions for handling school funds. We understand that a number of them pay the Treasurer out of the School Funds themselves. In this county we have paid the Treasurer out of General Revenue. One of these methods of paying commissions is right and the other is wrong. We want to be right, and to have authority for our position so that we can justify it if criticized.

"Will you please give us an opinion on the question, 'Should the County Treasurer of Jasper County be paid his commissions, allowed by law for handling school monies, out of the school monies protected by his services or should he be paid said commissions from the General Revenue Fund of the County?'"

Section 9266, R. S. of Mo. 1929, provides that the County Treasurer shall be custodian of school moneys, and provides for his compensation, thus:

"The county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts,

10-16
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17

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, in which counties the township trustee shall be the custodian of all school moneys belonging to the township, and be subject to corresponding duties as the county treasurer; and said treasurer shall pay all orders heretofore legally drawn on township clerks, and not paid by such township clerks, out of the proper funds belonging to the various districts; and on his election, before entering upon the duties of his office, he shall give a separate bond, with sufficient security, in double the probable amount of school moneys that shall come into his hands, payable to the state of Missouri, to be approved by the county court, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands; and on the forfeiture of such bond it shall be the duty of the county clerk to collect the same for the use of the schools in the various districts. If such county clerk shall neglect or refuse to prosecute, then any freeholder may cause prosecution to be instituted. It shall be the duty of the county court in no case to permit the county treasurer to have in his possession, at any one time, an amount of school moneys over one-half the amount of the security available in the bond; 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."

The above underlined section is ambiguous, and we will have to look to other statutes relating to the same subject to help us determine whether the Treasurer receives the above compensation out of school funds in the county treasury or out of the general revenue of the county treasury.

A familiar principle of statutory construction is that it is proper to resort to other statutes relating to the subject to ascertain the intention of the Legislature. In the case of Hannibal & St. Joseph R. Co. v. Shacklett, 30 Mo. 550, l. c. 557, the court said:

"* * * it is altogether consistent with the rules of construction to resort to other statutes, more specifically appropriated to the subject, for the purpose of ascertaining the intention of the legislature in the enactments of the general statute."

Section 9243, R. S. of Mo. 1929, dealing with county school funds, is silent as to appropriation of same for anything other than for the establishment and maintenance of free public schools in the several counties, thus:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent per annum, on unencumbered real estate security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of this state, and all moneys which shall be paid by persons, as an equivalent for exemption from military duty, shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools in the several counties of this state."

We find nothing in the above section which would indicate that county school funds may be used to compensate the County Treasurer for compensation for his services as custodian of school funds.

Section 9874, R. S. of Mo. 1929, provides what revenue the county court may appropriate, apportion and subdivide, thus:

"The county courts of the several counties of this state are hereby authorized and empowered, at the first regular term of such court after the taking effect of this chapter, and at the May term every year thereafter, to appropriate, apportion and subdivide all the revenues collected, and to be collected, and moneys received and to be received, in the various counties in the state, for county purposes, in the following order:

"I. A sum sufficient for the payment of all the necessary expenses that may be incurred for the care of paupers and insane persons of such county.

"II. A sum sufficient for the payment of all necessary expenses for the building of bridges and repairing of roads, including the pay of road overseers of such county.

"III. A sum sufficient for the payment of the salary of all county officers, where the same is by law made payable out of the ordinary revenues of the county.

"IV. A sum sufficient for the payment of the fees of grand and petit jurors, judges and clerks of elections, and fees of witnesses for the grand jury of the county.

"V. A sum sufficient for the payment of the other ordinary current expenses of the county, not hereinbefore specially provided for, which shall be known and designated as the contingent fund of such county; which last sum shall in no case exceed one-fifth of the total revenue of such county for county purposes for any one year."

It is clearly evident from Section 9266, supra, that the Legislature intended that the County Treasurer receive compensation for his services as custodian of the county school funds.

Mr. Roscoe Claycomb

-5-

October 15, 1936.

Section 9243, dealing directly with the appropriation of county school funds, is silent on the subject of paying any compensation to the County Treasurer for such services. Section 9874, supra, specifically provides for the salary of county officers out of the general revenue of the county, and we are of the opinion that in light of the foregoing it was the intention of the Legislature that the funds of the county for schools be sacredly preserved intact for the maintenance and establishment of free public schools, and that the compensation of the Treasurer for the above purposes be paid out of the general revenues of the county treasury.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

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

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