

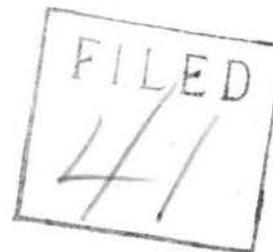
COUNTY COLLECTOR AND
COUNTY TREASURER :

Collector cannot pay taxes which he has collected to county treasurer by warrants unless such warrants were received from legal holder.

Treasurer not entitled to additional compensation for handling money derived from sale of road bonds.

July 16, 1936

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Mr. W. A. Holloway
Chief Clerk
Office of State Auditor
Jefferson City, Missouri

Dear Sir:

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

"Conditions have arisen concerning the acceptance of county warrants by the county collector which necessitates this inquiry wherein we would like to know under what circumstances is the collector entitled to turn county warrants to the county treasurer. Can he turn over and receive credit for county warrants whether or not they were received in payment of tax? If the collector is only entitled to receive warrants in payment of the amount of tax due the county general revenue fund, what proof should he be required to give to the county treasurer that the warrant was properly used?

"We would also like to know what compensation the county treasurer is entitled to for handling 'Good Roads Money' this Good Road Money derived from a bond issue."

I

Section 9911, Revised Statutes Missouri 1929,
provides:

"Except as hereinafter provided, all state, county, township, city, town, village, school district, levee district and drainage district taxes shall be paid in gold or silver coin or legal tender notes of the United States, or in national bank notes. Warrants drawn by the state auditor shall be received in payment of state taxes. Jury certificates of the county shall be received in payment of county taxes. Past due bonds or coupons of any county, city, township, drainage district, levee district or school district shall be received in payment of any tax levied for the payment of bonds or coupons of the same issue, but not in payment of any tax levied for any other purpose. Any warrant, issued by any county or city, when presented by the legal holder thereof, shall be received in payment of any tax, license, assessment, fine, penalty or forfeiture existing against said holder and accruing to the county or city issuing the warrant; but no such warrant shall be received in payment of any tax unless it was issued during the year for which the tax was levied, or there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county or city for that year."

It is plain from the above that a legal holder of a county warrant may use such warrant in payment of the county tax existing against such holder and accruing to the county issuing the warrant. However, such warrant cannot be received in payment of any tax unless it was issued during the year for which the tax was levied or there is an excess of revenue for the year in which the warrant was issued over and above the expenses of the county for that year. It is also plain that the county collector must accept such warrants in lawful payment of a county tax and is entitled to receive credit for them in his settlement with the county treasurer. However, the above section does not authorize the county collector to

settle the amount of taxes collected by him and owing to the county by county warrants, unless such county warrants were actually collected in the payment of taxes from the legal holders thereof.

If a county collector should settle his accounts with the county treasurer by warrants which he has not collected from the legal holder thereof, in the lawful payment of the county tax, he would be guilty of speculating in county warrants and subject to prosecution under the provisions of Section 4094, Revised Statutes Missouri 1929, which said section reads as follows:

Every clerk of a court of record, sheriff, marshal, constable, collector, of public revenue, or deputy of any such officer, or a judge of a county court, prosecuting attorney or county treasurer, who shall traffic for or purchase at less than the par value or speculate in any county warrant issued by order of the county court of his county, or in any claim or demand held against such county, shall be adjudged guilty of a misdemeanor, and shall, upon conviction, be punished by fine not less than twenty nor more than fifty dollars."

That a county collector may only pay the amount of taxes which he has collected and which are due the county by county warrants when he has actually received such warrants in the lawful payment of county taxes, is evident from the provisions of Section 12140, Revised Statutes Missouri 1929, which provides, in part:

"Provided, however, that nothing herein contained shall prevent the treasurer from receiving from the collector all scrips and warrants lawfully received by him in the payment of county tax: Provided further, before the treasurer shall receive such scrips and warrants, the collector shall make out a list

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of such scrips and warrants, under oath, specifying the number and amount thereof, the date when received, and from whom received; and said list shall be filed and preserved by the treasurer."

In view of the above, it is the opinion of this department that a county collector cannot pay the taxes which he has collected and which are due the county to the county treasurer by county warrants, unless such warrants have been actually received by the collector in the lawful payment of a county tax, and that the county treasurer should not receive such warrants from the collector in payment of such tax until the collector makes out a list of the warrants, under oath, specifying the number and amount thereof, the date when received and from whom received.

II

We next answer your question as to what compensation the county treasurer is entitled for handling "Good Roads Money" which money is derived from a bond issue.

We assume that the good roads money about which you inquire was received by the county treasurer under the provisions of Sections 7957, 7958 and 7959, Revised Statutes Missouri 1929, which sections authorize the county courts to issue bonds for the construction, reconstruction or improvement of the public roads and bridges in their respective counties. Section 7959 provides that the proceeds of such bonds sold shall be paid into the county treasury and kept in a separate fund to be known as the 'Road Construction Fund.' The sections in question do not provide any special compensation for the services of the treasurer in handling this money.

Under the provisions of Section 12136, Revised Statutes Missouri 1929, it is made the duty of the county treasurer to receive all moneys payable into the county treasury and disburse the same on warrants drawn by order of the county court.

Under the provisions of Section 12138, Revised Statutes Missouri 1929, the compensation of the county treasurer for his services is fixed by the county court in such sum as they

may deem just and reasonable, unless otherwise provided by law. Said section reads:

"Unless otherwise provided by law, the county court shall allow the treasurer for his services under this article such compensation as may be deemed just and reasonable, and cause warrants to be drawn therefor."

It is a fundamental principle of law that an officer is not entitled to compensation for performing duties imposed upon him by law, unless he can point to a statute authorizing such payment.

In the case of State ex rel. v. Adams 172 Mo. 1. c. 7, it was said:

"In order to maintain this proposition some statute must be pointed out which expressly or by necessary implication provides such compensation for such officer. For it is well settled law, that a right to compensation for the discharge of official duties, is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed. (Jackson County v. Stone, 168 Mo. 577; State ex rel. v. Walbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. v. Wofford, 116 Mo. 220; Givens v. Daviess Co. 107 Mo. 603; Gammon v. Lafayette Co. 76 Mo. 675.)"

In view of the above, it is the opinion of this department that a county treasurer is not entitled to any additional compensation for the handling of money derived

Mr. W. A. Holloway

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from the sale of bonds issued by a county for the construction or improvement of public roads.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

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

JET:LC