

COLLECTORS: Allowance for deputy hire cannot be retained by collector

August 27, 1936

FILED 66



Hon. Norman S. Newkirk
Collector of Revenue
Warsaw, Missouri

Dear Sir:

We have your request of August 18, 1936, for an opinion reading as follows:

"I would like to know your opinion concerning Section 9935a, Page 406, Laws of 1935, relating to "Amount of fees to be retained for deputy and clerical hire.", by county collectors.

Some have told me that in order to withhold and retain the twenty-five per cent of the maximum amount of my fees and commissions for deputy or clerical hire, that such amount as is retained must be expended by me for clerical or deputy hire, others are of the opinion that it is not necessary to expend the full amount retained for such clerical or deputy hire, but that the full twenty-five per cent may be retained by the collector regardless of how much thereof is expended for deputy or clerical hire, and I would appreciate having your opinion in the matter."

The salary of a collector is fixed by Section 9935, Laws of Missouri 1933, page 454. This section provides that the collector shall receive certain fees "as full compensation for his services in collecting the revenue, except back taxes*****." This is the only statute we are aware of that fixes generally the compensation of the collector. It is well settled in this state that public officials are not entitled to compensation unless they can place their finger upon the statute authorizing such compensation. State ex rel. vs.

Patterson, 152 Mo. Ap. 264, l.c. 268. King vs. Riverland Levee District, 271 S.W. 195, l.c. 196.

Section 9935a, Laws of Missouri 1935, page 406, provides for the payment of deputy and clerical hire, and fixes the amount that county collectors may retain for such purposes by the following language:

"*****each such officer may retain for the payment of Deputy and/or clerical hire a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions which such officer is permitted to retain*****."

Thus we see that from Section 9935a the twenty-five per cent allowance is for the payment of deputy or clerical hire.

We are of the opinion, as was set out by the Supreme Court in State ex inf. vs. Gate City Optical Company (Not yet reported):

"Indeed, the statute seems so plain on its face as to furnish its own clear interpretation"

that the statutes involved were all so clear as to furnish their own interpretation, and we are of the opinion that the twenty-five per cent allowance to collectors for deputy and clerical hire must be paid for such deputy and clerical hire and that no part of it may be retained by the collector. If such deputy or clerical hire can be obtained for less than the twenty-five per cent maximum allowance, then the collector is entitled to retain only a sufficient amount, under twenty-five per cent, to pay for such deputy and clerical hire.

Respectfully submitted,

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APPROVED:

JOHN W. HOFFMAN, Jr.
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