

COUNTY TREASURER - Cannot claim commission on school funds as provided in Sec. 9266, R.S. 1929 if funds of consolidated school district are paid direct to the treasurer of the district as provided in Sec. 9340, R.S. 1929.

January 17, 1936.

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Honorable Wm. H. Sapp
Prosecuting Attorney
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Dear Sir:

We are in receipt of your letter of sometime ago requesting an opinion from this Department, regarding the facts contained in a letter written by Miss Gladys Pauley, County Treasurer. Her letter is as follows:

"The tax collections for the town and consolidated school districts have always been sent by the collector directly to the treasurers of the different districts. I have been told that the attorney-general has ruled that this money should be paid to the county treasurer who disburses it to the district treasurers and collects his commission on it as well as on the rural school district disbursements. I understand that this is being done in some counties.

"Will you please investigate and find out if this is true?"

Diligent search of our files do not reveal that we have ever passed on this question. This question has arisen with many county treasurers throughout the State.

By the terms of Section 9266 R. S. Mo. 1929, the county treasurer is made custodian of school moneys, and said section contains compensation for the same, and reads as follows:

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

different districts, 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 selection, 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."

By the terms of Section 9340, R. S. Mo. 1929, the county or township collector is directed to pay all school funds belonging to consolidated school districts to the treasurer of said consolidated school district. Said section reads as follows:

"The county or township collector shall pay over to the treasurer of said board of education all moneys received and collected by him to which said board is entitled at least once in every month; and upon such payment he shall take duplicate receipts from said treasurer, one of which he shall file with the secretary of said board of education, and the other shall be filed in his settlement with the county court."

Thus it will be noted by the two sections that there is an apparent conflict. Section 9266 makes a treasurer custodian of all school funds, and section 9340 states that the collector shall pay to the treasurer of the school district. A history of the two sections reveal that section 9266 has been on our Statute books for a long period of time, while section 9340 was enacted by the Legislature many years later. We, therefore, come to the conclusion that 9340 is a special section, while 9266 is a general section. It is, therefore, necessary to apply rules of construction when general and special sections are involved.

In the case of *State ex inf. Barrett v. Imhoff*, 291 Mo. 603, the court said:

"Where there are two acts and the provisions of one have special application to a particular subject and the other is general in its terms and if standing alone would include the same matter and thus conflict with the special act, then the latter must be construed as excepted out of the provisions of the general act, and hence not affected by the enactment of the latter."

In the case of *State ex rel. Buchanan County v. Fulks*, 296 Mo. 614, the court said:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, * * * *. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; * * * *."

There are numerous decisions to this effect and we will not burden this opinion with further quotations.

CONCLUSION.

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In view of the fact that we consider section 9266 R. S. Mo. 1929 to be a general section, and section 9340 R. S. Mo. 1929 to be a special section, making it the duty of the county collector to pay direct to the treasurer of a consolidated district the funds belonging to said district, we are of the opinion that the county treasurer is not entitled to, nor can he claim any commission for the distribution of, or as custodian of school funds as provided in section 9266 R. S. Mo. 1929.

Respectfully submitted

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APPROVED:

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(Acting) Attorney General.

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