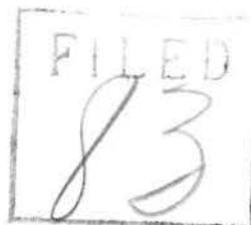


TAXATION: Bond of County Treasurers, ex-officio county
collectors.
BOND: County Collectors.

November 14, 1936.

11-16



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

We are in receipt of your letter of November 7, 1936, wherein you request an opinion on the following matter:

"This office is in receipt of several requests as to the amount of bond that the ex-officio collector of township organization counties should give. We would like to have an opinion from you in regard to this matter, as we find a conflict in the following sections:

"Section 9886, R. S. Missouri 1929 sets out in part that any officer who is ex-officio collector of revenue shall give bond and security as such ex-officio collector to the State of Missouri to the satisfaction of the county court in a sum at least equal to the amount of all the revenue to be, by him, collector for any one year.

"Section 12317, R. S. Missouri 1929 sets out that county treasurers as ex-officio county collectors of counties under township organization shall be required to give bond as other county collectors under the general revenue law.'

"Will you please, at your earliest convenience, advise this office which section to follow.

Your inquiry deals solely with the matter of statutory construction and we shall therefore make an examination into these statutes and determine, if possible, which is applicable to the situation presented, to-wit, the bond required of county treasurers who are ex-officio collectors of counties operating under township organization.

Section 9885, R. S. Mo. 1929, which has since been amended on two occasions (Laws of Mo. 1933, p. 464, and Laws of Mo. 1935, p. 409), prescribes the terms of the bond required of a county collector who has been elected as provided by Section 9883, R. S. Mo. 1929. This section governs the giving of bonds by most county collectors in the State of Missouri. However, in the following section, Section 9886, R. S. Mo. 1929, one of the sections with which you are concerned in your request, reads as follows:

"In any county where any officer thereof is ex officio collector of the revenue of said county, he shall give bond and security as such ex officio collector to the state of Missouri, to the satisfaction of the county court of such county, in a sum of at least equal to the amount of all the revenue to be by him collected for any one year, conditioned that he will faithfully and punctually collect and pay over all state and county revenue during his term as such ex officio collector, and that he will in all respects faithfully perform all the duties of collector according to the statute laws of the state governing county collectors of the revenue."

The foregoing section is general in its terms and purports to apply in any county when any officer is ex-officio collector of the county. We have traced this section back and find that it was first enacted in 1881 (Laws of Mo. 1881, p. 189). This Act is entitled "An Act to provide for the giving of bond by ex-officio collectors of county revenue." Section 1 of the Act is Section 9886, R. S. Mo. 1929. Section 2 of the Act is an emergency clause reading as follows:

"The necessity for the proper protection of the revenue in counties wherein there are but ex-officio collectors of revenue, creates an emergency, and this Act shall take effect from and after its passage."

By virtue of this emergency clause, it is quite apparent that this section was meant and intended to apply to those officials who were at the time of its enactment ex-officio collectors of the county revenue. It is a general section in purporting to cover all such ex-officio officials. It was approved March 26, 1881.

Let us now consider Section 12317. This section is the last section of Article 11 of Chapter 86, Revised Statutes of Missouri, 1929. This article consists of only six sections, the first section providing that county treasurers of counties having adopted or which may hereafter adopt township organization shall be ex-officio collectors. The other sections deal specifically with the duties of county treasurers as ex-officio collectors. In tracing this article back, we find that these six sections are the six sections of an Act first adopted in 1881, the two amendments since that date being immaterial to this inquiry.

By turning to page 224, Laws of Mo. 1881, we find that these six sections constituted an entire act, providing that in counties organized and operating under township organization, the county treasurer should be ex-officio county collector of revenue. It therefore conclusively appears that Section 12317, supra, is a special section prescribing the bond which shall be supplied by county treasurers as ex-officio county collectors, not general in its terms applying to all ex-officio collectors as was Section 9886, supra, when first enacted in 1881. Section 12317 is by its terms identical with the original section 6 of the Act of 1881. It therefore appears that Section 12317 is a special section applying specifically to county treasurers as ex-officio county collectors, and under well recognized rules of construction, special acts are to prevail over general acts in case of conflict, so that if a conflict exists between these sections, as applied to county treasurers who are ex-officio collectors, Section 12317 is to prevail.

However, when considering the purpose of Section 9886, supra, as originally enacted and as reflected by the emergency clause, it appears certain that it was never intended to apply to county treasurers as ex-officio county collectors. The emergency clause provides that the protection of the revenue in the counties having ex-officio collector^s creates an emergency.

As county treasurers were not at that time ex-

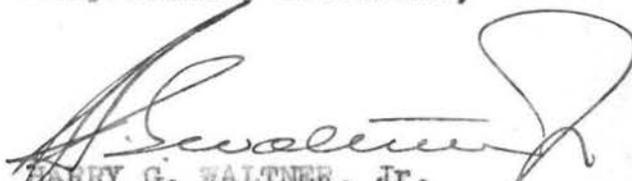
11/14/36

officio county collectors, it is certain that that law was not intended to apply to county treasurers who were later to become ex-officio collectors. It is well recognized that emergency clauses may be referred to in order to determine the legislative intent. This rule is likewise so well recognized as to need no citation of authority.

CONCLUSION.

It is therefore the opinion of this Department that Section 12317, R. S. Mo. 1929, is the applicable law determining the bond which should be furnished and supplied by County Treasurers who are ex-officio collectors of revenue.

Respectfully submitted,


HARRY G. WALTNER, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.