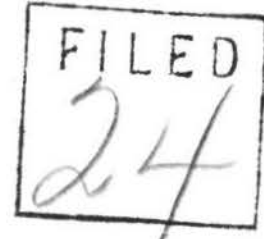


COUNTY COLLECTORS:

Collectors cannot retain twenty-five per cent. increase under Section 9935a, Laws of Mo. 1935, by reason of Section 8, Article XIV, Missouri Constitution.

May 21, 1937.

5-26



Senator Phil M. Donnelly
Missouri Senate
Jefferson City, Missouri

Dear Senator Donnelly:

This is to acknowledge the receipt of your letter of May 19, 1937, in which you request the opinion of this Department as to the commission of the county collectors in the collection of taxes. Your letter is as follows:

"The Fifty-Seventh General Assembly of Missouri passed an Act found in the Session Acts of 1933, at pages 454 to 458 inclusive, fixing the salaries or commission for county collectors.

"At the general election in 1934 county collectors were elected throughout the State. This was over a year after the effective date of the Act.

"The Fifty-Eight General Assembly passed an Act found on page 406 of the Session Acts of Missouri, 1935, approved May 1, 1935, relating to the maximum fees and commissions which may be retained by the collectors for the payment of deputies and clerical hire. There were no additional duties specified in the Act and no additional duties actually performed until possibly in some counties after January 1, 1937, when the collectors took over the duties of the county treasurers and became ex-officio county treasurers by the reason of the consolidation of those two offices.

"In view of the fact that the collectors were elected in the general election in 1934 and at that time they knew what their salaries and duties were to be even to the extent that they would be required

to take over the duties of the office of the county treasurers on January 1, 1937, I would like to know whether or not the county collectors were entitled, or are now entitled, to retain or collect the twenty-five per cent additional fees for deputy and clerical hire as provided for in the Act of 1935 on page 406.

"In other words, would this be construed as an increase in the compensation or fees of the county collectors during their term of office. In this connection I desire to call your attention to Section 8 of Article 14 of the Constitution of Missouri.

"If it is your opinion that the collectors are not entitled to retain the twenty-five per cent increase as provided for in the Act of 1935, at page 406, then would not the collectors be required to pay back to the counties the amount retained in violation of this Constitutional provision.

"I would appreciate an early opinion from you in regard to this matter."

As we understand it, the question is: Whether or not Section 9935a, enacted by the 58th General Assembly, and found in Laws of Missouri, 1935, at page 406, is applicable to the collectors now in office who were elected in November, 1934, for a four-year term, or, in other words, whether said collectors may legally retain the twenty-five per cent. increase in fees and commissions allowed under Section 9935a, supra, in view of Section 8, Article XIV of the Constitution of Missouri. This section provides:

"The compensation or fees of no State, county or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed."

In approaching this question it might be well to trace briefly the amendments to Section 9935, Revised Statutes of Missouri, 1929. The General Assembly of 1933 by the re-enactment of Section 9935, Laws of Missouri, 1933, pages 454-455, adopted the same general scheme as to the commissions the collectors were allowed to retain, as it existed under Section 9935, supra. This section in part provides as follows:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more : * *"

In the re-enactment of Section 9935 it left out the following part of said section in sub-division XV:

"* * that no collector shall be allowed to retain over nine thousand dollars of commissions and fees in any one year except as provided in sub-division fourteen herein."

And in lieu of the omitted portion it adopted the schedules in the first thirteen sub-divisions, but very materially reduced the maximum amounts the collectors in the various sub-divisions were allowed to retain; said portion of said section being as follows:

"Provided, that no collector, except as provided in subdivision fourteen herein, shall be allowed to retain commissions and fees in any one year in excess of the following amounts: in any county coming within the provisions of subdivisions one to seven, inclusive, hereof not more than \$2500.00; in any county coming within the provisions of subdivision eight, not more than \$3000.00; in any county coming within the provisions of subdivision nine, not more than \$3500.00; in any county coming within the provision of subdivision ten, not more than \$4000.00; in any county coming within the provisions of subdivision eleven, not more than \$4500.00;

in any county coming within the provisions of subdivision twelve, not more than \$5000.00; in any county coming within the provisions of subdivision thirteen, not more than \$5500.00; "

And said amendment provided further:

"that the limitations herein contained as to the total compensation of collectors, treasurers and ex-officio collectors shall not apply during the official term of the persons now holding such offices, but the compensation of such persons now holding said offices shall be governed as now provided by law."

The 1933 reenactment of Section 9935, supra, did not change the law in regard to the expenses the collector was required under the laws to pay out of his commissions but left it as it was under the old law. Therefore, in those counties where he paid his deputies out of his commissions and fees of his office, the law remained as it was, notwithstanding the reduction of the maximum amount he was allowed to retain.

Under the law as it existed prior to 1933, he paid his deputies and clerical hire out of his commissions, and under the 1933 law he continued to pay his deputies and clerical hire out of his commissions. Then in 1935, during the term of the collectors who were elected in November 1934, the 58th General Assembly enacted a new law, found at page 406, Laws of Missouri, 1935, and denominated same Section 9935a, which is as follows:

"That the officers referred to in Section 9935, in addition to the maximum amount of fees and commissions permitted to be retained by County Collectors as provided in Section 9935 Revised Statutes of Missouri for 1929, as amended by an act of the General Assembly, approved May 11, 1933, and found in the Session Laws for 1933 at

pages 454 to 458, inclusive, 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 by said Section as so amended, but such Deputy and/or clerical hire shall be payable out of fees and commissions earned and collected by such officer only and not from general revenue."

Coming now directly to your question asked in your letter, as to whether or not this twenty-five per cent. increase for deputy and/or clerical hire is applicable to and may be retained by the collectors in office and elected at the November, 1934, Term. It must be borne in mind that his deputy or deputies and clerical hire were paid out of his commissions under Section 9935, R. S. Mo. 1929, and under re-enacted Section 9935, Laws of Missouri, 1933, page 454. And under the 1935 act the collectors may continue to do so but they have a twenty-five per cent. increase for that purpose, if their commissions amount to that much more over the maximum amounts they were permitted to retain under the 1933 act.

Is this twenty-five per cent. increase, therefore, such an increase of compensation or fees as comes within the meaning of Section 8, Article XIV of the Missouri Constitution?

In Ruling Case Law, Vol. 22, page 534, it is said:

"A constitutional provision forbidding the change of the compensation of an official during his term of office is inexorable. It admits of no exceptions and affords no opportunity for evasion by the Legislature or other body."

The law is well-settled in Missouri and numerous cases may be cited that the compensation of a public official, such as County Collector, may not be increased during his term of office, and we cite the following cases:

State ex rel. Stevenson v. Smith, 87 Mo. 158; Givens v. Daviess County, 107 Mo. 603; Callaway County v. Henderson, 119 Mo. 32, l. c. 40; Folk v. St. Louis, 250 Mo. 116, l. c. 134; State ex rel. Truman v. Jost, 269 Mo. 248; State ex rel. Buchanan Co. v. Imel, 280 Mo. l. c. 559.

It is said in 46 Corpus Juris, p. 1026, Section 226, the following:

"Under a constitutional prohibition against increasing the compensation of officers, where the statute allows a lump sum to cover their compensation and expenses, such sum cannot be increased during their term, and the allowance of additional deputies to be paid out of public funds to an officer who is bound to pay all deputies and assistants from his salary is a violation of such a provision."

The general rule is stated as follows in L. R. A., 1918C, in notes at page 561:

"The general rule is that where the compensation of a public officer is, by statute, fixed at a lump sum which is to cover the expense of running the office, it is a violation of a constitutional provision prohibiting an increase of salary during such officer's term to authorize the appointment of a deputy or assistant where there was none before, and to provide that the compensation be met from the public fund."

We are inclined to the view that the collectors now in office and elected at the November, 1934, general election are not entitled to the twenty-five per cent, increase as permitted under the amendment of 1935. For example, a collector under subdivision thirteen of the 1935 Act was allowed to retain \$5500.00 if the fees and commissions amounted to that much and he then paid his deputies and clerical hire \$1200.00 out of said sum. Under the 1935 enactment he would be permitted to pay his deputies and clerical hire out

of the twenty-five per cent increase and would be permitted to retain the \$1200.00 theretofore paid out for deputy hire for himself, and his compensation would thereby be increased that much.

In *Wines v. Garrison*, 214 Pac. 56, l. c. 58, 26 A. L. R. 1302, quoting from the case of *Dougherty v. Austin*, 94 Cal. 611, 29 Pac. 1095, 16 L. R. A. 161, it was said:

"The sum allowed to any given officer being a lump sum out of which he must pay for the services of all deputies and assistants necessary for the prompt and faithful discharge of all the duties of the office, it is evident that his own compensation consists of the residue remaining after payment of such deputies and assistants; and it is equally evident that just so far as the county assumes the payment of such deputies and assistants, such residue is enlarged and the compensation increased."

And further in said opinion it was said (l. c. 59):

"In *County of Calaveras v. Poe*, 167 Cal. 519, 140 Pac. 23, it was held to be the fixed and settled law of this state that the allowance of a deputy to an officer who had theretofore received a gross sum to cover his compensation and the expenses of his office was a violation of the Constitution if made during his term of office, citing *Dougherty v. Austin*, supra; *Humiston v. Shaffer*, 145 Cal. 195, 78 Pac. 651; *Elder v. Carey*, 19 Cal. App. 776, 127 Pac. 826; *Hanson v. Underhill*, 12 Cal. App. 546, 107 Pac. 1016; *Applestill v. Gary*, 18 Cal. App. 387, 123 Pac. 228."

May 21, 1937.

It is, therefore, our opinion that the twenty-five per cent. increase allowed the collectors under the Laws of Missouri, 1935, page 406, is not available to the county collectors now in office and elected at the November, 1934, general election, by reason of Section 8, Article XIV of the Constitution of Missouri.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

Attorney-General

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