

JUSTICE OF THE PEACE: Public officer, who having in his possession public funds for which he has refused to make settlement, may not hold his office under reelection until he shall have made full settlement of such funds.

October 23, 1937.

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Mr. S. B. Ellis
Attorney at Law
Carrollton, Missouri

Dear Mr. Ellis:

We are in receipt of your request for an opinion, which is in part as follows:

"Carroll County is under township organization and as such, Carrollton township, Carroll County, is entitled to four Justices of the Peace under Section 12269 Revised Statutes of Missouri (1929) and on March 26, 1935 Wm. M. Wall was elected as one of the four Justices of the Peace, and was properly qualified and commissioned as such and said commission provided among other things that he shall hold his office as Justice of the Peace for two years and until his successor is elected and qualified; and that at the election for township offices held on March 30, 1937 Wm. M. Wall was not a candidate for the office of Justice of the Peace; but that at said election for township officers on March 30, 1937 four Justices of the Peace were elected; and that at such election Joe Cochran was elected as one of the four Justices of the Peace, for Carrollton township and was notified by the township clerk on April 5 as is provided by Section 12274, Revised Statutes of Missouri, 1929.

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"On August 26, 1935 State of Missouri filed its report of State audit for Carroll County

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with the County Clerk of Carroll County, Missouri; and among other officers the report shows that Joe Cochran, Justice of the Peace for Carrollton township, Carroll County, Missouri owed to the County and State the sum of \$16.00 for fines collected by him which goes to the school funds of Missouri; and that he was notified by the County Clerk of Carroll County, Missouri that said report showed that Joe Cochran owed to the County the sum of \$16.00 and said amount being not paid suit was filed by the Prosecuting Attorney of Carroll County on March 2, 1936 in the Court of Ora Roberts, Justice of the Peace for Carrollton township for the sum of \$16.00 and that the case was continued from time to time until the 3rd day of July, 1936 when judgment was rendered against the defendant, Joe Cochran by default in the sum of \$16.00 together with cost of suit, and no part of said judgment has been paid.

* * * * *

The Constitution of Missouri, Article II, Section 19, is as follows:

"That no person who is now or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all the public money for which he may be accountable."

From your letter we understand that judgment has been obtained against a justice of the peace for fines he collected prior to his election, upon his refusal to pay the same, which go to the county school fund as provided in Section 9243, Revised Statutes of Missouri, 1929, which is as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest

that can be obtained, not exceeding eight nor less than four per cent. per annum, on unencumbered real estate security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of this state, and all moneys which shall be paid by persons, as an equivalent for exemption from military duty, shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools in the several counties of this state."

A collector or receiver of public money must pay over the same to the proper officer and in default of same is denied further political preferment and the door of the same office for another term shall be barred to him until he shall have shown himself eligible and worthy by a full settlement and payment of all public funds in his hands.

The Supreme Court in passing upon this question in *State ex inf. v. Breuer*, 235 Mo. 1. c. 249, said:

"It appears therefore by the above decisions of this court, by legislative enactment and by the general understanding and practice of the people, that persons holding office as collectors or as receivers of public money, have not been regarded as ineligible to election to office for the sole reason that a final accounting of the public money in their hands had not been made at the time of the election.

"It will be noticed that the catch-words of the section of the Constitution are:

'Collectors, receivers etc., in default, ineligible to office,' And the general rule of law upon the subject, as stated in 29 Cyc. 1385, is as follows: 'Statutes frequently disqualify for public office those who, having in their possession public funds, are in default. Such statutes disqualify only those who have been determined by legal authority to be in default, or admit that they are in default, and appear generally to be liberally construed in favor of eligibility to office. Thus "default" is said to mean a will full and corrupt omission to pay over funds.'

"The reasonable and salutary interpretation given to the Constitution and statutory provisions under consideration, by this court, is not that those holding the offices mentioned shall be treated as in default and denied further political preferment while occupying such office, but rather that the door of the same office for another term, or of another office, shall be barred to them until, and only until, they shall have shown themselves eligible and worthy by a full settlement and payment of all public funds in their hands."

A public officer, according to your letter, has made such default and refused to pay the amount of public funds collected by him and for which said funds there has even been a judgment rendered.

Conclusion.

It is, therefore, the conclusion of this Department that a public officer, who having in his possession public funds for which he has refused to make settlement, and for

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which a judgment has been obtained, may not hold his office under reelection until he shall have made settlement of such funds.

Yours very truly,

S. V. MEDLING
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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