

County court cannot, by order, voluntarily apply salaries and fees due county officials to the payment of delinquent taxes, on personal or real estate, which they may owe.

August 27, 1937.

Hon. Elbert L. Ford,
Prosecuting Attorney,
Dunklin County, Mo.,
Kennett, Missouri.



Dear Sir:

This office is in receipt of your request for an opinion which is as follows:

"The County Court has asked me to write to you for an opinion in regards to certain County officials who owe delinquent personal and real estate taxes. They are desirous of knowing whether the County can refuse payment of salary or fees due such officials and apply the same against the amounts owing on said delinquent taxes.

"I have endeavored to find some statute to cover this situation but have been unable to do so. I find the statute prohibits the payment of jury and witness fees when they owe taxes, fines, bond forfeiture, etc., to the State and County.

"Please get me this opinion at your earliest convenience."

The Supreme Court in the case of Corondolet v. Picot, 38 Mo. l. c. 130, with reference to the question of delinquent tax says:

"The levying of taxes is a matter solely of statutory creation, and no means can be resorted to, to coerce their payment other than those pointed out in the statute."

Also the same rule is stated in State ex. rel v. Snyder, 139 Mo. l. c. 556.

Hon. Elbert L. Ford.

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August 25, 1937.

The salary of a public officer is a right created by law:

"The right of a public officer to the salary of his office, is a right created by law, is incident to the office, and not the creature of contract nor dependent upon the fact or value of the services actually rendered". State ex. rel v. Walbridge, 153 Mo. l. c. 203, State ex. rel v. Brown, 146 Mo. 401, Gammon v. Lafayette Co. v. 76 Mo. 675.

We find no constitutional act nor statute giving the county court the right to voluntarily apply salaries and fees of county officials to the payment of personal and real delinquent taxes which they might owe.

CONCLUSION

It is, therefore, the opinion of this Department that in the absence of a constitutional act or statute, giving the county court the right, by order, to voluntarily apply the salaries and fees, of county officials, to the payment of delinquent taxes, personal or real estate, which they may owe, such court has no right to so apply said salaries and fees.

Respectfully submitted,

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APPROVED:

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