

COUNTY COLLECTOR: Is entitled to be reimbursed by county court for postage expended during term if not barred by five year statute of limitations.

October 16, 1937

Hon. Joe Grandhomme
Collector of Revenue
St. Francois County
Farmington, Missouri



Dear Sir:

This department is in receipt of your letter of September 8, 1937, in which you request an opinion, as follows:

"It has been a custom in this county for the collectors to add to the tax bill for postage on all statements rendered, whereas if said taxes were not paid the collector would take the loss of his postage. The same being true on all commercial mail. Whereby we have a loss in postage of an amount of \$100 to \$150. per year.

In talking to one of my fellow collectors, he informs me that he has an opinion from you which states that the collector is entitled to be reimbursed from the county for all the loss in postage.

In view of the above, since the first of this year 1937, the county has been reimbursing me with my postage loss, on the strength on the above opinion.

Now the point that I would like to know, is can I receive reimbursement from the county for the loss in postage for the past years of my term."

The opinion referred to in your letter, we take, to be one written to Morgan M. Moulder, Prosecuting Attorney.

Hon. Joe Grandhomme

October 16, 1937

of Camden County, Missouri, on January 20, 1937, in which it is concluded, as you state, that a county collector is entitled to be reimbursed for stamps and postage used in the carrying out of his duties. However, this opinion does not directly pass upon the question before us here.

In *Ewing v. Vernon County*, 216 Mo. 681, a suit was filed by a recorder against the county for the recovery of postage expended by the recorder over a period of four years one and one-half months. The court held that the recorder was entitled to be reimbursed for this postage and allowed recovery for the full period. The court said at l.c. 695:

"Where * * * the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. * * * Thus it is customary to allow officers expenses of fuel, clerk hire, stationery, lights and the office accessories."

In the early case of *Boone County v. Todd*, 3 Missouri 140, the county clerk of Boone County, Missouri, brought a mandamus action to compel the county court to allow and pay a claim for several years rent (the opinion does not state the number of years) for an office which the clerk furnished out of his own funds. The court held that the clerk was entitled to be reimbursed for the total amount of rent for the several years, for the office he was compelled to furnish, where the county court had neglected to furnish the same.

The decisions in *Saylor v. Nodaway County*, 60 S.W. 1057, and *St. Louis County Court v. Ruland*, 5 Missouri 268, are to the same effect. Recovery was allowed for the full amount of the officers' expenditures in connection with the legitimate expenses incurred in the performance of his official duties.

While we do not find a case in this state or in any other state where this point has been directly passed upon, in the cases above cited, the officers were contending for and were permitted to recover for their expenses, as in the *Ewing Case*, for a period of more than four years.

Hon. Joe Grandhomme

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October 16, 1937

The point before us here was not raised in these cases but the effect of these holdings, we think, is that the officer may recover their necessary expenditures for the past years of his term.

The account for postage which the collector may have, under the opinion of this department heretofore mentioned, is an obligation or liability on the part of the county to the collector. This being such an account, it would fall within the five year statute of limitations, being Section 862, R.S. Missouri 1929, which is in part as follows:

"Within five years: First, all actions upon contracts, obligations or liabilities, express or implied, except those mentioned in section 861, * * * *."

Section 861, R.S. Missouri 1929, is the ten year statute of limitations providing when actions upon any writing shall be barred.

CONCLUSION

Therefore, it is the opinion of this department that the collector is entitled to be reimbursed for all postage expended by him in the carrying out of his official duties, but that an action to enforce the payment of said postage account would be barred by the five year statute of limitations, if said statute is properly plead and relied upon.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J.E. TAYLOR
(Acting) Attorney General

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