

DRAINAGE DISTRICT: County and township ex-officio collectors' compensation for collecting current and delinquent taxes

August 23, 1937

Honorable George B. Kautz
Prosecuting Attorney
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Bethany, Missouri



Dear Sir:

This department is in receipt of your letter of August 18, 1937, in which you request an opinion as follows:

"(1) Is the county treasurer and ex-officio collector merely an agent of the drainage district, Chapter 64 being a complete code of laws within itself, and entitled only to the two per cent as provided for in the above statutes, or is he entitled to an additional commission as treasurer and ex-officio collector to be collected from the tax-payer?"

"(2) Does the secretary and ex-officio treasurer of the drainage district have any authority to accept the payment of delinquent drainage taxes when the 'back drainage tax book' has been certified and delivered to the county treasurer and ex-officio collector for collection of delinquent drainage taxes?"

You further state that:

"It has been the practice of former treasurers and ex-officio collectors to retain two per cent of the delinquent drainage taxes collected, and also to collect an additional two

per cent from the taxpayer as in the case of the collection of delinquent state and county taxes."

Section 10763, R.S. Missouri, 1929, relating to drainage taxes, is in part, as follows:

"The said collector shall retain for his services one per centum of the amount he collects on current taxes and two per centum of the amount he collects on delinquent taxes."

Section 10880, R. S. Missouri, 1929, is as follows:

"The county and township collectors for collecting current taxes for drainage and levee districts shall receive one per cent of all such taxes collected, and for the collection of delinquent taxes for such, they shall receive two per cent of all sums collected."

These two sections, and other related sections, fix the amount of compensation to which the collector is entitled and it will be noticed that it is provided that he "shall retain for his services" the amount so provided.

In *Little River Drainage District v. Lassater*, 29 S.W. (2d) Missouri 716, 719, the court said:

"It would seem that, in collecting taxes for drainage districts, even though such drainage district might include the entire territory of the county, county collectors would be performing no duties or functions

of their offices as county collectors. In performing these duties, they are agents and officers of and perform them for such districts."

At l.c. 718 of the Lassater case, supra, it is said by the court that:

"It is our conclusion that Sections 4398, 4426 and 4575 (now 10763, 10796 and 10880) can be read together and completely harmonized, and that the proper construction of the three sections, when so read together, is that township collectors are entitled to the same compensation for collecting drainage district taxes as county collectors, and that county collectors ordinarily are entitled to retain only one per cent for collecting current drainage district taxes, but that county courts may increase such compensation to an amount not exceeding an additional one per cent of the taxes collected, where such collectors incur excessive additional expenses in collecting such taxes."

Section 4575, R. S. Missouri 1919, was repealed in Laws 1927, page 180, and a new section was enacted which abolished, by excluding, that part of Section 4575 (now 10880) giving county courts authority to grant the collector one per cent additional compensation for collecting the current drainage taxes.

You state in your letter that Harrison County has adopted township organization and, of course, under township organization the county collector would collect no current drainage tax, because it would be collected by the township collector. The rule as laid down in the Lassater Case, supra, and the provisions of Section 10763 and 10880 apply to township collectors as to their compensation.

Section 10925, R. S. Missouri, 1929, is another section which sets out the compensation the collector is entitled to for collecting drainage tax and does so in the same manner and in the same amounts as Sections 10763 and 10880, R. S. Missouri, 1929.

In *St. Francis Levee District v. Dorroh*, 289 S.W. 925, 933, it is said that:

"In view of the language of Section 4619 (now 10925) that the collector shall retain for his services 'two per centum of the amount he collects on delinquent taxes' taken in connection with the language of other sections of the statute above quoted, it was the intention and purpose of the legislature that the levee district, rather than the land owner and taxpayer, shall compensate the collector for his services in collecting the tax and penalties thereon. The judgment is therefore erroneous in taxing the defendant (taxpayer) with the collector's commission."

It is therefore clear that the township collector is entitled to only one per centum of the current taxes collected, this to be paid by the drainage district and not by the taxpayer, and that the collector's commission is not to be included in the amount collected from the taxpayer. It is equally clear that on delinquent taxes which are collected by the county collector, the same rules that are applicable to the collection of current drainage tax apply.

The practice of former collectors in Harrison County is clearly wrong because under those methods the collector would be receiving four per cent for the collection of the delinquent drainage taxes while he is only entitled to a two per cent under the statute.

Section 10796, R. S. Missouri, 1929, is in part as follows:

"In counties when the provision of Chap. 86, R. S. Missouri, 1929, (township organization) are or may hereafter be in force, the secretary of the board of supervisors shall extend all drainage taxes * * * on separate tax books for the respective townships in which such lands are situate, and such tax books shall be certified to the township collect-

ors of such township at the same time and in the same manner as provided for county collectors. Such taxes shall be collected by such township collectors at the same time and in the same manner as state and county taxes are collected, * * * * * The delinquent drainage tax shall be certified by the secretary of the board of supervisors to the county treasurer as ex-officio collector of delinquent taxes, who shall collect such delinquent drainage tax at the same time and in the same manner as herein provided for the collection of the delinquent drainage tax in counties not under the provisions of Chapter 86, R. S. 1929 (township organization).

It will be noted that in this section no provision is made whereby the secretary of the board of supervisors may collect any of the taxes mentioned. He performs his duties when he certifies the current and delinquent taxes to the township collector and county collector for them to collect. However, in Section 10797, R. S. Missouri 1929, it is provided that the taxpayer has the privilege of paying the tax assessment to the treasurer of the board of supervisors at any time on or before a date fixed by the board. This section, however, does not contemplate the current or delinquent taxes paid each year, but contemplates the whole benefit assessed to a particular tract of land and provides that this may be paid in a lump sum instead of yearly in the installments, which constitute the current tax, plus interest levied each year.

Therefore, it is the opinion of this department that the township collector is entitled to receive, as compensation, one per cent of the current drainage tax collected by him, this amount to be paid by the drainage district, and neither charged as part of the tax nor collected from the taxpayer.

That the county treasurer as ex-officio collector is entitled to receive, as compensation, two per cent of the delinquent drainage taxes collected by him, this amount to be paid by the drainage district, and neither

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charged as part of the delinquent tax nor collected from the taxpayer.

That neither the treasurer or secretary of the board of supervisors of the drainage district has any right or authority to accept payment of current or delinquent drainage taxes, this being no part of the duties imposed on them by statute, it being wholly the duty of the township or county collector.

Respectfully submitted,

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APPROVED:

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