

COUNTY TREASURER, EX)
OFFICIO COLLECTOR)

Not entitled to percentage fee for
disbursement of school moneys referred
to in Section 9266 R. S. Mo. 1929.

February 26, 1937

3-15



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

We are in receipt of your request for an opinion of this
office reading as follows:

"We are in receipt of an inquiry from a
member of the County Court of Carroll
County concerning the application of Sec-
tion 9266, R. S. Missouri 1929, and that
portion of the Section pertaining to the
compensation which may be allowed the
County Treasurer by the County Court in
counties operating under Township Organi-
zation.

We would appreciate it if you would render
an opinion advising us whether or not this
provision for compensation is applicable
to a County Treasurer in County operating
under Township Organization."

Section 9266 R. S. Missouri 1929, referred to in your
communication, designates the county treasurer of each county as
the "custodian" of the moneys belonging to the school districts
in the county until paid out by warrant duly issued by the Board
of Directors

"except in counties having adopted the town-
ship organization law, in which counties the
township trustee shall be the custodian of all
school moneys belonging to the township, and
be subject to corresponding duties as the
county treasurer;"

After the above quoted phrase, the section requires the county
treasurer to supply bond in double the amount of school moneys
coming into his hands, conditioned upon the "faithful disbursement"
of such moneys. After other provisions relative to his duties
under his bond it is provided:

"and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him, and to be paid out of the county treasury."

It therefore appears that this section allows the county treasurer additional compensation for the handling of school moneys which cannot amount to more than one-half of one per cent "of all school moneys disbursed by him". However, this phrase is to be taken into consideration with the other provisions of this section. From the quotation heretofore set out, it appears that the custodian of school moneys in counties under township organization is in the proper "township trustee" and he is charged with "corresponding duties" as to those moneys as is the county treasurer in respect to the school moneys of which he is custodian and actually disburses.

It therefore appears that school moneys in counties under township organization are taken out of the general provisions of this section and it logically follows that they should not be considered in determining the amount of compensation to be allowed the county treasurer for the handling of those school moneys of which he actually is the custodian and "disburses". This conclusion is logical when we view the other statutory provisions relative to the duties of the township trustee in respect to the school moneys.

We direct attention to Section 12290 respecting the township trustee. This section requires him to keep a strict account of all money received from whatever source, and

"to show the amount of money in his hands belonging to each school district or fractional part in the township".

It requires him to make an annual settlement with the county clerk

"of all moneys received by him on account of school",

and it also directs him to

"pay all warrants drawn on him by the board of school directors in his township of the funds belonging to the district making the order."

Under Chapter 86, referring specifically to township organization, we find directions as to the duties of the township collector respecting school funds and involving the township trustee. Section 12340 of this Chapter refers to the duties of the township collector and directs him, in respect to the school moneys which he collects from the taxpayer, to pay such funds directly to the township trustee, who is also the township treasurer, stating

"the amount collected from each school district or fractional part thereof."

It is further provided:

"As soon as the school funds are appropriated, the township treasurer shall apply to the county treasurer for the school moneys belonging to each school district or fractional part thereof in his township, and the county treasurer shall pay over to him all of said school moneys, taking duplicate receipts thereof, one of which he shall file with the township clerk. The township treasurer shall safely keep such money until paid out upon order of the board of directors of the various school districts of his township."

Thus we see that by these statutory provisions the actual duties of disbursement and paying of expenses of school districts in counties under township organization revolves directly upon the township trustee upon whom the warrants are drawn by the board of directors of the proper district. The county treasurer in said county is merely the go between to get the "appropriated" school funds into the hands of the township trustee. He honors no warrants drawn by the district for the payment of its expenses but merely turns over these funds upon proper demand being made.

In speaking of compensation, it should not be overlooked by virtue of Section 12310, page 377, Laws of Missouri 131, the township trustee

"shall receive a compensation of two per cent for receiving and disbursing all moneys coming into his hands as such treasurer, when the same shall not exceed the sum of One thousand dollars and one per cent of all sums over said amount."

Thus by this provision we have the township trustee receiving a per centage commission or fee upon all moneys coming into his hands for receiving and disbursing the same. If the county treasurer were allowed one-half of one per cent there would be two fees allowed for disbursing school funds in counties under township organization. This was never contemplated by the legislature and in view of all the law cannot be permitted.

Before concluding this question, let us also consider the specific wording of Section 9266, heretofore quoted. By it the county treasurer receives

"not to exceed one-half of one per cent of all moneys disbursed by him."

In viewing all of the sections relative to the duties of the county treasurer ex officio collector, the county treasurer in counties not under township organization, and the township trustee or treasurer, it is clear that the word "disburse" is used in the sense of paying out in satisfaction of expenditures and not in the sense of merely turning over funds to another who in turn actually pays the same out or expends the money for the purposes for which the taxes it represents were levied. The case of State ex rel. Thompson vs. Board of Regents, 305 Mo. 57, 264 S. W. 698, is very much in point. In this case the Supreme Court had before it a construction of a statute requiring the Board of Regents to make a report of its disbursements. In construing this term the Court stated, page 701:

"If, as is contended by relator, all moneys received by the board were required to be paid into the state treasury, the only money that could be disbursed by the board and for which it

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would have to render an account would be that which had been appropriated for the college by the Legislature. The authorized disbursements of the board are not thus limited by the section, which includes 'appropriations incidental fees and moneys received from all other sources.' In addition, the board is required to state the purposes for which these disbursements were made. Certainly it cannot, under any rule of construction, be held that a payment into the state treasury of incidental fees received by the college is in any sense a disbursement. Even the tyro in the use of our mother tongue attributes no other meaning to the word than to pay out or expend. A payment into the treasury, therefore, cannot be so classified, as it simply effects a change in the custodian and the place of deposit of the fund."

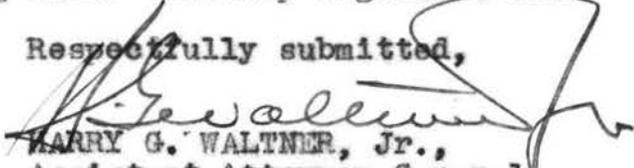
This decision of the Supreme Court dictates the construction which should be given the word "disbursed" in the statutes under examination. A fair and reasonable construction of Section 9266 leads to the conclusion that the word "disbursed" as there used means such moneys as the county treasurer actually pays out and expends, but not such moneys as he simply turns over or acts as a transfer agent in transmitting to the township trustee who actually proceeds to pay out and expend these funds on the order of the school district.

CONCLUSION

It is therefore the opinion of this office that the provisions for compensation contained in Section 9266 allowing compensation to a county treasurer for the disbursement of school moneys by him do not apply to a county treasurer ex officio collector in a county operating under township organization.

Respectfully submitted,

APPROVED:


HARRY G. WALTNER, Jr.,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General