

COUNTY TREASURER:

The County is not liable for the compensation of the county treasurer prior to his appointment by the Governor.

October 28, 1937.



Honorable William E. Stewart
Prosecuting Attorney
Knox County
Edina, Missouri

Dear Mr. Stewart:

On October 16th you submitted the following question and facts to this Department for our opinion:

"In 1935 the legislature abolished the office of County Treasurer and at the same time made the County Collector the Ex-officio treasurer in Counties of less than 40,000, not having Township organizations, which our county comes under. At that time Thomas O'Rourke was the county treasurer and M. M. Breese was the county collector. Mr. Breese retained O'Rourke in his office at \$70.00 per month. This law was repealed by the last legislature and became effective Sept. 6, 1937. The Governor appointed Thomas O'Rourke treasurer on the 27th day of September. Breese claims that he was legislated out of office on Sept. 6, and that he does not owe O'Rourke from that date, because he was then working for the county. My contention is that the county did not become obligated until the 27th of September. Does Breese owe O'Rourke or the County or does O'Rourke stand to lose his time from September 6th to the 27th? Breese held the county funds and could not turn them over until his successor was appointed and

qualified and if O'Rourke had not been working for him he would have had to do the work himself, is my opinion. Had the Governor appointed someone else there is no doubt that the county would not owe O'Rourke anything. The County Court and Breese agree that O'Rourke should be paid for these twenty-one days and the County is willing to pay if it can legally do so."

The 57th General Assembly by Section 12132a, Laws of Missouri, 1933, page 338, in effect abolished the county treasurer's office in counties having a population of less than 40,000 inhabitants and made it the duty of the county collector to perform any and all such duties of such county treasurer. The effective date was January 1, 1937. Accordingly, the county collector of your county took over the duties of the county treasurer.

The 59th General Assembly repealed the former sections passed by the 57th General Assembly, and especially Section 12132a, and reenacted Sections 12130 to 12138, inclusive, Laws of Missouri, 1937, page 424. Section 12130, page 425, is as follows:

"There is hereby created in the several counties of this State, now or hereafter having a population of less than 40,000 inhabitants according to the last Decennial United States Census, a county treasurer, to be appointed by the Governor, and to take office immediately after the effective date of this Act and who shall enter upon the discharge of the duties of his office after his said appointment and qualification and who shall hold his office for a term ending on the first day of January, 1939, and until his successor is elected and qualified, unless sooner removed from office. Provided, that nothing in this section shall apply to counties under township organization."

The Act was approved June 30, 1937, the emergency clause being vetoed. Therefore, it required ninety days after the adjournment of the Legislature before the Act became effective, which in the instant case was on September 6, 1937. With this

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history in mind, we think your question does not present a difficult or intricate problem.

You state in your letter that Mr. O'Rourke was appointed on the 27th day of September. On that day he became a county officer and was entitled to receive the emoluments of his office in the future. Prior to the 27th day of September he was not county treasurer, and it is elemental that he could receive no salary before he was appointed, commissioned and qualified either on the contention that he was a de facto or a de jure officer. You state that he was employed by Mr. Breese, the County Collector, prior to that time. He was holding his appointment or employment under Mr. Breese solely at the option and discretion of Mr. Breese. As long as he remained in the employ of Mr. Breese he could look to no other person for his compensation. For the sake of argument, we will assume that he was a deputy collector.

46 Corpus Juris, p. 462, states as follows:

"Deputy, for whom the law fixes no compensation, must be paid by the officer employing him, and not out of the public treasury."

The collector's compensation consists of fees and commission. His deputies are appointed by him and compensated by him.

Therefore, if Mr. O'Rourke remained in the employment of Mr. Breese after the 6th of September, 1937, and if he is to receive any compensation between the period of September 6, 1937 to September 27, 1937, he must receive the same from Mr. Breese and not from Knox County.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

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APPROVED:

J. E. TAYLOR
(Acting) Attorney-General