

DRAINAGE & LEVEE DISTRICTS:)
LEVEE & DRAINAGE DISTRICTS:)
COUNTY TREASURER:) Fees due county treasurer for disbursing
TAXATION AND REVENUE:) levee funds organized under county
COUNTY TREASURER'S FEES:) courts.

May 18, 1937.

5-18

FILED
97

Honorable W. P. Wilkerson
Prosecuting Attorney
Scott County
Benton, Missouri

Dear Sir:

This is to acknowledge your letter of recent date in which you asked this Department numerous questions. Your letter is as follows:

"On the first of the year the offices of County Treasurer and collector were combined in this County. Up to now the County Treasurer has been getting a commission on disbursements of Levee Districts under the provisions of Section 10969. He has also been drawing a commission on disbursements of County Court Drainage Districts. This has always been done here and when I sought authority for allowing the commission on Drainage District funds was cited to Sec. 10881.

"In view of the fact that the County Collector-Treasurer will make his first settlement soon I should like very much to be advised:

"1. Whether his commission on disbursements of Levee Districts are non-accountable, that is whether they go to him in excess of his \$5500.00 limit as allowed by the statute.

"2. Whether Sec. 10881 constitutes any authority whatever for the payment of a fee on County Court drainage District Funds disbursed by the Collector-Treasurer, where the districts are long established and are not in process of organization. And if not,

May 18,
Feb. 23, 1937.

whether there is any authorization for such a commission in law, and if there is no authorization in law, whether the County Court has the power to contract for the payment of such compensation.

"3. If it is determined that the County Collector-Treasurer is entitled to the fee mentioned in 2 above or can contract for a commission with the County Court, then we would like to know whether or not this commission is non-accountable."

We note that your county comes under the provisions of a law enacted by the 57th General Assembly, Laws of Missouri, 1933, page 338, Section 11232a, providing that the county treasurer shall take over all the duties now performed by the county treasurer and such collector shall be county collector and ex officio county treasurer and shall perform any and all duties now devolving upon the county collector and county treasurer, under which statute the county collector performs the duties of the county treasurer. We shall undertake to answer the questions asked by you in the order submitted in your request.

I.

Whether his commission on disbursements of Levee Districts are non-accountable, that is, whether they go to him in excess of his \$5500.00 limit as allowed by the statute?

We assume from your statement that your collector comes under the provisions of sub-division 13, Laws of Missouri, 1933, p. 458, which limits the amount of money retained by the county collector in your county to \$5500.00.

In the case of Little Drainage District v. Lassater, 29 S. W. (2d) 716, l. c. 719, the court said:

"The constitutional inhibition only applies to compensation or fees of officers for performing duties incident to their offices, and has no application to additional duties imposed upon such officers not ordinarily incident to their offices. State ex rel. McGrath v. Walker, 97 Mo. 162, 10 S. W. 473;

May 18,
~~Feb. 23,~~ 1937.

State ex rel. Hickory County v. Dent, 121 Mo. 162, 25 S. W. 924; State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S. W. 655; State ex rel. Harvey v. Sheehan, 269 Mo. 421, 190 S. W. 864; State v. Zevely v. Hackmann, 300 Mo. 59, 254 S. W. 53; State ex rel. Barrett v. Boeckler Lumber Co., 302 Mo. 187, 257 S. W. 453.

"The collection of drainage district taxes is no part of the duties ordinarily incident to the office of county and township collectors. Such duties are additional duties dependent upon the existence of a drainage district having lands, taxable for district purposes, lying within the territorial jurisdiction of such officers. In collecting such taxes, county and township collectors are officers and agents of the particular drainage district. They are required to give separate bonds to such district. Section 4396, R. S. 1919. The provisions of section 8, art. 14, of the Constitution, are not violated by section 4575."

While this case refers to the township collector in the collection of drainage district taxes, we think that it is an analogous case and is authority that the fees or compensation received by the county collector and ex officio county treasurer under Sections 10881 and 10969, R. S. Mo. 1929, is not such a fee which must be accounted for by him in his \$5500.00 limitation.

II.

Coming now to the second question in your letter we find that Section 10881, R. S. Mo. 1929, which was enacted Laws of Missouri, 1913, page 321, and is found in Article 4, Chapter 64, R. S. Mo. 1929, provides:

"County Treasurers for receiving, receipting for, preserving and paying out funds of drainage and levee districts, shall receive one per cent. of sums paid out."

May 18,
~~Feb. 23,~~ 1937.

From your question we note that you give some force and effect to the words "fees for services rendered in organizing drainage and levee districts" under Article 4, and on examination of the Session Acts of 1913, at page 321, we find that the same words are therein used as the heading for same. This is no part of the Act and we refer you to that part of the enacting clause which provides:

"An Act defining the fees to be paid county and township officers for services rendered drainage and levee districts organized in Missouri."

It does not state that they are fees for services rendered in organizing drainage and levee districts.

In the case of King v. Riverland Levee District, 279 S. W. 195, 1. c. 196, the court said:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. State ex rel. Evans v. Gordon, 245 Mo. 12 loc. cit, 27, 149 S. W. 638;"

It is, therefore, our opinion that the fees earned by the treasurer are fixed by the statute and there is no necessity of any contract as mentioned in your letter.

III.

Answering the third question asked in your letter, we think that the case of Little Drainage District v. Lassater, supra, is authority for the holding that these fees paid to the treasurer for services rendered to the drainage and levee districts, are not accountable fees.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR