

COLLECTORS: Rule for determining the classification under Section 9935. Taxes levied for special road district to be included in classification.

June 7, 1937.



Mr. A. A. Willard,
Collector of Revenue,
Dallas County,
Buffalo, Missouri.

Dear Sir:

This Department is in receipt of your request for an opinion, which reads as follows:

"The question has arisen as to charges determining collector's pay.

Section 9935 in Missouri Laws of 1933 sets out wherein the whole state, county, bridge, road, school and all other local taxes including merchants and dram shop licenses assessed and levied for any one year, (setting out the amount) shall determine the class wherein each collector of the various counties shall settle.

The question is: Does the taxes for special road districts which is levied by the local road commissioners of the various road districts count the same as other taxes as to charges to determine collector's class?"

Section 9935, R. S. Mo. 1929, as amended in the Laws of 1933, page 454, Extra Session, Laws of Missouri 1933-34, page 104, and in the Laws of 1935, page 406, reads in part as follows:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:

"I. In each county in this state wherein the whole state, county, bridge, road, school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for

any one year amount to _____
dollars or less, a commission of _____
per cent on the amount collected."

While this law, in the form above, has been on the statute books since 1877, there seems to be no case wherein the courts have directly interpreted this section in the light of whether when it says the whole taxes "assessed and levied", it means all taxes assessed and levied or only those to be collected by the collector.

Two rules in construing statutes are that statutes should receive a sensible construction such as will effect the legislative intention and, if possible, so as to avoid an unjust or an absurd conclusion, *State ex rel. Taylor v. Daves*, 281 S. W. 398, 313 Mo. 200; and that the court in construing a statute should avoid an unreasonable construction where a reasonable construction can be adapted. *State ex rel. Pearson v. Louisiana R. R. Co.*, 114 S. W. 956, 215 Mo. 479.

In *State ex rel. Scotland Co. v. Ewing*, 116 Mo. 129, 22 S. W. 476, the court held:

"It is manifest from a reading of the foregoing provisions that the per cent of commissions should have been determined by the amount of all such taxes levied, that is by the amount ordered or required to be raised and not by the amount actually collected."

"Commission" is defined in *Purefoy v. Godfrey*, 150 Ala. 142, 16 So. 701 as,

"When used to express compensation for service rendered, it usually denotes a percentage on the amount of moneys paid out or received."

We believe a reasonable construction of Section 9935, supra, is that the legislative intent was to fix the per cent classification so that if the collector collected the entire amount, he would receive a fair compensation for the work which was involved in collecting that amount. However, the legislature must have taken cognizance, as they did in the Budget Act, that the entire amount of taxes assessed and levied for any year are as a matter of actual practice rarely collected that year, so they placed his commission "on the amount actually collected," that is, as was said in *Gordon v. Lafayette County*, 74 Mo. 426, "None is allowed for ineffectual effort to collect the revenue." As was pointed out in an opinion rendered by this Department to Lewis A. Duvall on August 21, 1935, a copy of which is enclosed:

"Since the collector does not collect said tax and consequently receives no commission therefor, it is apparent that the corporation franchise tax should not be included in the amount of the taxes assessed and levied for the purpose of determining the collector's commission."

Watson v. Schnecko, 13 Mo. App. 208, we believe aptly states the rule when it says the classification of the counties is by the "gross amount of collections in each whereupon the percentage is fixed in each instance on the amount collected." To hold otherwise would be to put a strained construction on Section 9935, supra, and would result in an unfair and unjust conclusion. There might be two collectors who both collect the same amount of taxes. However, if one county had a large amount of taxes assessed and levied which were not to be collected by the collector but were included in determining the percent classification, then the collector of that county would have a lower rate of commission on the taxes he collected than the collector in the other county which had no such taxes and consequently the first collector would receive less compensation than the second, although the amount collected and the work involved was the same.

Therefore, having concluded that the classification of the county be determined by the amount of taxes, assessed and levied, that are to be collected by the collector, we next turn to your question of whether "taxes for special road districts which is levied by the local road commissioners of the various road districts count the same as other taxes as to charges to determine collectors class?"

From your question we infer that you refer to "special road districts--benefit assessments in counties not under township organization" as set forth in Article 10, Chapter 42, Revised Statutes of Missouri, 1929, because this is the only special road district in which the board of commissioners may levy taxes.

Section 8067, R. S. Mo. 1929, provides in part as follows:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working,

repairing and dragging roads in the district, general taxes on property taxable in the district, and shall also have power and authority and be its duty to levy special taxes for the purpose of paying the interest on bonds when it falls due and to create a sinking fund sufficient to pay the principal of such bonds at maturity; and, whenever such commissioners shall, at any time between the first day of January and the first day of March of any year, file with the clerk of the county court a written statement that they have levied such tax, and stating the amount of the levy for each hundred dollars assessed valuation, the county clerk, in making out the tax books for such year shall charge all property taxable in such district with such tax, and such tax shall be collected as county taxes are collected. * * *

It is apparent from the above statute that the taxes levied by the road commissioners are to be collected by the county collector and so the amount should be included with the other taxes so as to determine in which classification the collector falls so as to determine the percent he is allowed. We, however, direct your attention to Section 8066, R. S. Mo. 1929, and which provides that the poll tax shall be collected by the commissioners. This tax is not to be included in the classification.

We set forth in detail above the rule to be followed in determining the class so that you may have a guide from which to determine your percent.

It is, therefore, the opinion of this Department that under Section 9935, supra, only taxes that are to be collected by the collector are to be included in the classification which determines the percent the collector is to receive. It is further the opinion of this Department, that

A. A. Willard

Page 5.

June 7, 1937.

since under Section 8067, supra, the county collector is to collect the taxes levied by the commissioners of a special road district, such taxes should be included in the classification to determine the collector's percent.

Yours very truly,

Olliver W. Nolen,
Assistant Attorney-General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

AO'K MR