

COLLECTORS: Collector's compensation for deputy hire and expense of office.

March 18, 1938.

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Honorable George E. Heneghan,  
County Counselor,  
Clayton, Missouri.

Dear Sir:

This will acknowledge yours of March 2nd last wherein you request the opinion of this department on the following questions:

- "1. Does Section 9935a, Laws of Missouri, 1935, apply to St. Louis County, and does it constitute a limitation on the amount the Collector of St. Louis County can expend for deputy and clerk hire by requiring the Collector to limit himself for deputy and/or clerk hire to 25% of the total fees and commissions he is permitted to charge; i.e., to 'collect, receive and retain' under the provisions of Section 9935, R. S. Mo. 1929, as amended by Laws, Missouri, 1933 and 1937?
2. Does the Collector of St. Louis County come within the provisions of the County Budget Law, or does the provisions of Section 11, p. 347, pertaining to departments, etc., receiving revenues in whole or in part from the County exclude the Collector on the theory that he does not receive his revenues in whole or in part from the county but from commissions, fees, etc.?

You are aware, of course, that certain revenues of his office are allowed to him indirectly by the County out of the general fund, and therefore, we contend that part of his revenue does come from that source; and further, in a broad sense, a greater part of his revenues does come from the County in that it does not come from the state, municipalities, etc.?"

### I.

Approaching your first question, we note that Section 9935 of the 1929 Statutes, as reenacted in the Laws of 1937, page 548, has been on the statute books for a long number of years in substantially the same general form as to subdividing the collectors in the several counties into fourteen subdivisions according to the amount of taxes levied and collected in the respective counties, and fixing the collectors' compensation on a commission or percentage basis in proportion to the amount of taxes collected. Subdivision 14 deals with collectors in counties where the amount of taxes collected exceeds two million dollars and is the subdivision applying to the Collector of St. Louis County.

For a long period of time prior to 1933 the commissions or pay of the collectors in the first thirteen subdivisions was limited to a maximum of nine thousand dollars. Collectors in the fourteenth subdivision were and are still limited to ten thousand dollars. In 1933 Section 9935 was amended to the end that the maximum amount of commission or pay that the collectors in the first thirteen subdivisions were permitted to retain out of the taxes collected was materially, if not radically, reduced. Subdivision 14, however, was in no wise affected or changed so far as the collector's commission or pay was concerned.

Ever since the original enactment, many years ago, of the statute pertaining to collectors' compensation, no provision was ever made, or at least no express provision made, relative to collectors in the first thirteen subdivisions for the payment of deputies employed or other expense of the office until such provision was finally made in 1935.

On the other hand, during all of such period and up to the present time an express provision exists relative to collectors in the fourteenth subdivision for the payment of deputy hire, etc.

In the legislative session of 1935 Section 9935 was amended by adding thereto Section 9935a, which is as follows (Laws of 1935, page 406):

"That the officers referred to in Section 9935, in addition to the maximum amount of fees and commissions permitted to be retained by County Collectors as provided in Section 9935 Revised Statutes of Missouri for 1929, as amended by an act of the General Assembly, approved May 11, 1933, and found in the Session Laws for 1933 at pages 454 to 458, inclusive, each such officer may retain for the payment of Deputy and/or clerical hire a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions which such officer is permitted to retain by said Section as so amended, but such Deputy and/or clerical hire shall be payable out of fees and commissions earned and collected by such officer only and not from general revenue."

Paraphrasing the above section, in substance and effect it would read as follows:

"That the officers referred to in Section 9935, as amended, shall be permitted, in addition to the maximum amount of fees and commissions allowed to be retained by county collectors as provided in said section, as amended, to retain for the payment of deputy and/or clerical hire a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions which such officer is permitted to retain by said section as so amended," etc.

It is to be noted that in the amending, and by the amendment, of Section 9935 by the Legislature in 1933 the only change that was made, namely, the change in the maximum fees, referred to and affected solely the officers in the first thirteen subdivisions. The change made by the amendment in no wise referred to the officers in subdivision 14, nor were such officers in said subdivision 14 in any way affected by the purpose of the amendment (to reduce the possibilities as to amount of pay that the collectors in the first thirteen subdivisions might receive).

This substantial, if not radical, reduction in possibilities of pay for such collectors, and without allowance for any additional compensation to pay deputies and other expenses, undoubtedly worked hardship in some, if not all, cases of collectors in the first thirteen subdivisions. Hence, when the Legislature convened at the 1935 session this situation was made known and it no doubt undertook to remedy the situation by the enactment of Section 9935a, which gave to the collectors in the first thirteen subdivisions the additional allowance provided for by said amendment.

When Section 9935a was considered and passed by the Legislature at the 1935 session, collectors in subdivision 14, at the time of the consideration and passage of said section, were provided with an allowance for deputy hire and expenses, as shown by the language in the 1933 law (Section 9935, page 454), as follows:

"Said collector shall present for allowance proper vouchers for all disbursements made by him on account of salaries and expenses of his office and other costs of collecting the revenue, which shall be allowed to him as against the commissions retained by him."

Consequently, there could be no reason for, or purpose in, the consideration and passage of Section 9935a so far as expenses of deputy hire, etc., of collectors in subdivision 14 were concerned.

We further notice that the allowance made for deputy and clerical hire is based upon the maximum amount of fees and commissions that a collector is permitted to retain under

Section 9935, as amended. Turning to said section, we find, so far as collectors in the first thirteen subdivisions are concerned, the only place the word "retain" is used is in connection with the enumerated scale of commissions allowed such collector. Likewise, in subdivision 14 the word "retain" is used only in connection with the net commission remaining after salaries and expenses have been paid.

Consequently, the additional allowance of the twenty-five per cent provided for in Section 9935a being based on the maximum amount of commissions permitted to be retained, the Collector of St. Louis County (along with all collectors in subdivision 14), if the act applies to such collectors, would be limited to twenty-five hundred dollars for deputy salary and expenses of office.

By Section 5 of an act of the 1933-1934 Extra Session Laws of Missouri, page 106, collectors in counties of fifty thousand to eighty thousand population are entitled to have three deputies at a salary of one hundred seventy-five dollars per month, each, or a total of sixty-three hundred dollars for the year. We find by the census figures that Buchanan and Greene Counties are the two counties in the state which fall within such population bracket, and we are authoritatively informed that the annual tax collections in said counties run from something over a million dollars to close to two million dollars. As there are no other counties in the state anywhere comparable in population to Buchanan and Greene Counties (save Jackson and St. Louis Counties, which far exceed them), and hence could not collect anything like a million dollars or more, it is apparent that there were no collectors in the state falling within subdivision 13 of Section 9935 when the Legislature enacted Section 9935a a year or more later. We must assume that the Legislature knew at the time it considered the last mentioned section that collectors who, prior to the Special Session Act of 1933-1934, fell in subdivision 13, had been taken out and placed on a salary basis and allowed in addition thereto as much as sixty-three hundred dollars per annum for deputy hire.

In view of the fact that St. Louis County is at least two and one-half times greater in population than either Greene or Buchanan Counties, it is fair to presume that the increase in tax collections in St. Louis County over the other two would be in like proportion. In fact, if we are reliably informed,

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St. Louis County has an average annual collection of eight million dollars or better. Accordingly, it would seem unreasonable that the Legislature at the 1935 session, presumably with knowledge at the time that the collectors of Buchanan and Greene Counties were being allowed at least sixty-three hundred dollars per year for deputy hire in collecting less than two million dollars in taxes, intended to limit the Collector of St. Louis County and the City of St. Louis to only twelve hundred fifty dollars for deputy hire in collecting two and one-half times or more in taxes. Hence, we are impelled to the conclusion that the Legislature did not intend that Section 9935a applied to collectors in subdivision 14, and that consequently said section does not apply to the Collector of St. Louis County because:

1. The only officers affected by the amendment to Section 9935 being the officers included in the first thirteen subdivisions, it is hardly good reasoning to conclude that an act of the Legislature "refers" to some person or thing whom or which is in no wise affected by the act. Hence, the officers referred to as stated in the act are those in the first thirteen subdivisions only.

2. In view of the fact that collectors in subdivision 14, at the time of the act, were, and had been, provided with an additional allowance for deputy hire and expenses, it was unnecessary and needless for the Legislature to enact Section 9935a for the benefit of such collectors.

3. In view of the further fact that the Legislature knew, or was presumed to know, at the time Section 9935 was considered, it deemed it fair and wise at a former session to allow certain collectors the sum of sixty-three hundred dollars per year for their labors in collecting a far less amount of taxes than is collected in St. Louis County, to then say that the Legislature in 1935 intended that the Collector of St. Louis County--who was collecting upwards of four times the amount of taxes that was being collected in Buchanan and Greene Counties--should be limited to one-fifth of the allowance given to the two collectors, for his expense in such collections, is to charge the Legislature with an apparent unreasonable, if not absurd, intention and act.

Chief among the cardinal rules for statutory construction is to find and declare the meaning and legislative intent of the law, giving to it a reasonable and not an unreasonable

and absurd construction. The rules and principles of statutory construction applicable here are forcibly stated in the case of Lumber Company v. Railroad, 216 Mo. 1. c. 671-672, where the court said:

"With the laws before us the chief purpose of the court is to find and declare the meaning and legislative intent thereof. If the statute (or the words thereof) is susceptible of two constructions, one of which renders the law unconstitutional, and the other makes it valid, the court should adopt the latter. \* \* \*

"Nor should we give the statute such construction as would make it unreasonable and absurd, for it is to be presumed that such was not the legislative intent. And after all the legislative intent and purpose is the thing to be sought, when there is doubt as to the meaning of the language used. This doubt may arise from the statute itself or from cognate statutes, which must be considered therewith. \* \* \*

"\* \* \* The inartificial manner in which many of our statutes are framed, the inaptness of expressions frequently used, and the want of perspicuity and precision not infrequently met with, often require the court to look less at the letter or words of the statute than at the context, the subject-matter, the consequences and effects, and the reason and spirit of the law, in endeavoring to arrive at the will of the law-giver."

Many additional decisions of like tenor could be cited, but we believe the one will suffice to show the principle to be followed.

However, in reaching the conclusion that Section 9935a does not apply to the Collector of St. Louis County, we do not mean to say that no limit is or can be placed on the allowance he is entitled to for deputy hire and expenses. We say, to the contrary, there can be such limit.

Subdivision 14 of Section 9935 applies to and controls collectors in both counties and cities wherein the taxes levied for any one year exceed two million dollars.

Both such collectors are required to pay all deputy salaries and other expenses of the office in collecting the respective revenue.

Both such collectors are required to make settlement annually at one and the same time, to-wit, on the first Monday in March.

Both such collectors are required to present for allowance the total expense of collecting the revenue.

Both such collectors are permitted to retain a maximum of ten thousand dollars for compensation.

Hence, we say that the salient features of the provision for payment of deputy hire and expenses of office and compensation are identical in the case of both or all collectors in subdivision 14.

Section 9935 provides, among other things, as follows:

"Provided, that the municipal authorities of such cities may limit the maximum number of and maximum salaries to be paid to all employes of the collector."

Then follows the words, "The collector shall make settlement," etc.

Then follows the further words, "Said collector shall present for allowance," etc.

Recurring to the above quoted provision of Section 9935, it is our conclusion, in view of what we have outlined above, and also other considerations, that the Legislature evidently intended that the word "cities" should be given a sufficiently comprehensive meaning to include the word "counties," or, realizing as a matter of law that a collector who has authority to collect state and county taxes, even if solely in a city, is as much a state officer as one who collects taxes in the county, the Legislature intended that the same restriction should be placed on both collectors as to limiting the number and pay of deputies and expense of office.

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Our courts have definitely passed upon the status of an officer who performs state and county duties solely within a city, as, for example, the City of St. Louis, which falls within subdivision 14 as to tax collections.

In the case of State ex rel. v. Bus, 135 Mo. 1. c. 337, the court said:

"While the city of St. Louis is strictly a municipal corporation its territory is also a subdivision of the state in which officers are elected to perform the functions of the state government as distinguished from those pertaining to municipal government. Those officers are in so sense municipal officers. Their designation as officers of the city of St. Louis refers to their territorial jurisdiction rather than to the governmental duties they perform. They are officers under the laws of the state and perform their duties within the city limits. The sheriff of the city of St. Louis is an officer of the city in the same sense that a sheriff of a county is an officer of the county. He is no more a municipal officer than a sheriff of a county is an officer of a municipal corporation, the territory of which is included in his jurisdiction. These propositions are settled by the decisions of this court."

In State ex inf. v. Koeln, 270 Mo. 1. c. 185-186, the court said:

"The territory confined within the boundaries of the city of St. Louis forms a political subdivision of the State. This territory has no county organization in the ordinary use of that term, but by the Constitution the said city is to 'collect the State revenue and perform all other functions in relation to the State in the same manner as if it were a county as in this Constitution defined.' If this

political subdivision of the State were styled a county no confusion would arise in arriving at the conclusion that the person whose duty it was to collect the State taxes was an officer of the State and that his election would be a subject of legislative control.

"Why then should the election of the Collector of the Revenue of the City of St. Louis (a separate political subdivision of the State which, under the Constitution, bears the same relationship to the State as a county), who, at least so far as collecting the revenue ordinarily collected by a county collector is concerned, performs the same governmental function, be controlled by a law different from that which controls the election of collectors in the other political subdivisions (counties) of the State? No reason is apparent why the election of one should be controlled by a law different from that applying to other officers exercising a like governmental function, and none can be said to exist unless perchance the power of control over the election of this officer in the city of St. Louis was, by the Constitution, permanently transferred to the charter making power of said city."

In State ex rel. Crutcher v. Koeln, 332 Mo. 1. c. 1234, the court said:

"The compensation of all county collectors has for many, many years been governed by statute and fixed by graduated scale based upon a classification of the various counties (the city of St. Louis being regarded as a county), according to the total taxes levied in them respectively for any one year."

In view of the case holding above that the collectors of both the City of St. Louis and St. Louis County perform their functions as state officers, and that both are subject

to the same and identical provisions as to settlements and allowances for deputy hire and expenses and maximum compensation, no good reason exists, nor could likely be shown, for the belief that the Legislature intended that one collector could be restricted in his expenses, while the other could not be. Consequently, we are of the opinion that the County Court of St. Louis County can limit the maximum number of and maximum salaries to be paid to all employees of the collector, and may otherwise reasonably limit the expenditures of his office and cost of collecting the revenue.

## II.

Answering your second question concerning the collector's relation to the Budget law, we first say that we have been unable to find where any Missouri court has passed on the question you asked, and hence it becomes one of first impression.

Undoubtedly the revenue derived from tax collections belongs to the state and county the same as all other fees, commissions and money collected by the other county officers. Certainly such revenue does not belong to or become the property of the collector. Such collector is the mere agent of the state and county to collect such revenue or taxes and thereby satisfy the state and county lien (not any collector's lien) against the taxpayers' property. While the method or manner used by the county in paying the collector, namely, permitting him to retain a part of the total revenue in place of first paying it over to the proper county officer and then having his (the collector's) part paid back to him, may be a different method than ordinarily used, yet it does not alter the fact that all such revenue is the county's and the collector receives his part of such revenue from the county by virtue of his office. Furthermore, the collector's office pays over to the proper officer of the county, annually, revenue derived from tax collections. In view of this fact, that the county receives some of its revenue from the collector's office, we fail to understand how the county or the budget officer could intelligently prepare a budget unless he had an estimate of all of the sources of county revenue. The fact that the county does not pay, at least directly, the expense of the collector's office does not alter

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the apparent difficulty that the budget officer would be in when he knew there was a source of revenue which could be counted on, yet had no estimate of what it would be, so that the county would be in a position to know the total amount of revenue out of which it could budget and make its necessary expenditures. Hence, we conclude that the collector is subject to Section 11 of the Budget Act to the extent at least of preparing annually an estimate of the probable revenue arising from tax collections which on the collector's settlement will be due the county.

Respectfully submitted,

J. W. BUFFINGTON,  
Assistant Attorney General.

APPROVED:

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

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