

COLLECTOR * TOWNSHIP: Income taxes collected by said officer should be included with other state and county taxes collected by him, and this total sum used as a basis for arriving at compensation.

April 4, 1938

4/5



Mr. Charles J. Hoover
Prosecuting Attorney, Grundy County
Trenton, Missouri

Dear Sir:

This department is in receipt of your letter of March 8, 1938, in which you request an opinion as follows:

"A question has arisen in Grundy County concerning the commission to be deducted by the Township Collector as compensation for taxes collected.

"Briefly, the facts are as follows: In 1933, the Trenton Township Collector included some income tax collections in the settlement made by the County Court, and took as her commission, the average commission for that year, which was .017694%. In 1934, the Township Collector, upon the advice of the State Auditor, who came to Grundy County at that time to audit books of the County, instructed the Clerk not to include income taxes in the final settlement of State and County taxes, but for the Township Collector to charge the regular $2\frac{1}{2}\%$ commission. The Township collector in 1934, 1935, and 1936, did not include the income taxes in final settlement of taxes, and took $2\frac{1}{2}\%$ of income tax collections as commission.

"The books of the county are now being audited, and the auditors have advised the collector that the income taxes should have been included in the final settlement, and that she should have taken as her commission, the average commission. It is obvious that if the Township Collector was mistaken in her method of procedure, that she will owe

the difference between the $2\frac{1}{2}\%$ commission and the average commission.

"May I please have your opinion as to whether or not income taxes should be included in the final settlement of State and County taxes, or should the income taxes be considered as a separate item? Will you please give an opinion as to the proper method of calculating the Collector's commission on income tax collections that have been made by her?"

Before proceeding to the question presented here, we desire to eliminate some preliminary matters.

The state income taxes are properly collected by the township collector in counties under township organization, Sections 10128 and 10132, R.S. Missouri, 1929. His compensation is to be paid in the same manner and in like amounts as is paid for the assessment and collection of other state and county taxes, Section 10133, R.S. Missouri, 1929. The amount of said compensation is fixed by Section 12337, R.S. Missouri, 1929, which provides that "he shall receive a commission of two and one-half percent on the first forty thousand dollars collected; one percent on the next forty thousand dollars collected; and three-fourths percent on the remainder of all moneys collected by him".

The question before us, as we understand it, is whether or not the collector, in calculating his compensation, should include the state income taxes collected along with other state and county taxes collected by him, and figure his compensation on the total amount under the scale provided in Section 12337, supra, - or whether he should keep said income tax collection separate from other state and county taxes and take the percent provided in Section 12337, supra, on this amount as a separate item, and also take the percent provided for on other state and county taxes as a separate item.

For example, we will assume the collector in one year collects \$40,000.00 other state and county taxes and \$40,000.00 income taxes. If the compensation is to be paid on the total of these sums, we see that the collector will receive \$1400.00. On the other hand, if each is to be used as a separate item in arriving at the compensation, we see that he will receive \$2000.00. Thus, it is apparent that in reaching a conclusion if the one or the other of these methods is decided to be

April 4, 1938

correct, it will make a decided change in the collector's compensation - either an increase or a decrease.

In Section 12337, supra, we have underlined a certain phrase. This section provides the collector is to have a certain percent of "all moneys collected by him", and is made broad and comprehensive in its meaning by the word "all". In State ex rel. v. McQuillan, 246 Mo., l.c. 534, it is said that when a statute is so worded it "should receive a construction in aid of the broad intendments of the lawmaker". What did the legislature mean here by "all moneys collected by him"?

We are constrained to think that they meant by this the inclusion of income taxes along with other state and county taxes collected in arriving at a sum from which the statutory commission could be taken to afford the collector his compensation. This, we think, because, as we have stated at the outset: The collector, for collecting income taxes, is paid in the same manner and in like amounts as is paid for the assessment and collection of other state and county taxes. Section 10133, R.S. Missouri, 1929, thus refers the collector to Section 12337, supra, for his commission and this section provides the commission shall be arrived at by taking a certain percent of all moneys collected by him on state and county taxes, which of course, includes the income taxes.

In further support of this opinion we refer you to Sanderson v. Pike Co., 195 Mo., l.c. 605, in which it is said:

"It is a well settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and the statute which is claimed to confer that right must be strictly construed."

A strict construction of the terms of Sections 10133 and 12337, R.S. Missouri, 1929, will not permit, under any circumstances, a township collector to take his commission on the income taxes collected as a separate item but the same must be included along with other state and county taxes collected and the statutory commission must be based upon this total.

Mr. Charles J. Hoover

- 4 -

April 4, 1938

CONCLUSION

Therefore, it is the opinion of this department that state income taxes collected by a township collector should be included in with other state and county taxes collected by said officer and the percent commission provided for in Section 12337, R.S. Missouri, 1929, taken on this total sum.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

LLB:VAL