

COLLECTOR OF ST. LOUIS:

Collector of St. Louis County  
can not retain an amount greater  
than \$10,000.00 under Section 9935  
Division 14 as amended by Session  
Laws of 1937.

January 17, 1938

1-19



Hon. M. Ralph Walsh,  
Prosecuting Attorney,  
St. Louis County,  
Clayton, Missouri.

Dear Sir:

I have your letter of September 20, 1937 enclosing a letter to you of even date from E. O. Harper, Comptroller of St. Louis County, requesting that you obtain an opinion from our office. The Comptroller's letter is in the following terms:

"I respectfully request that you obtain an opinion from the Attorney General in the following matters:

Section 9935 Div. XIV provides that the Collector may retain \$10,000.00 per annum as compensation. This section also states

'All fees, commissions or other compensations heretofore charged, received or allowed by or to any such collector as compensation for his services, whether under or by virtue of State law or not, or hereby abolished; and such collector and all his deputies and employes are hereby forbidden, under penalty of forfeiture of office, to collect, charge or receive, directly or indirectly, any fees or commissions in the nature of compensation, or other compensation other than thos allowed and authorized by this section.'

"In view of the fact that the law specifically states the maximum compensation, and that all fees, etc., heretofore allowed whether by virtue of State laws or not abolished, can the Collector of St. Louis County retain an amount greater than \$10,000.00?

"Trusting that you will request such an opinion at once, I am"

According to your request you desire to know whether or not the collector of St. Louis County can retain an amount greater than ten thousand dollars (\$10,000.00) a year from the fees as salary. The county collector of St. Louis County is a ministerial officer and must be governed by Section 13, article 9 of the Constitution of the State of Missouri. This section reads as follows:

"The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

There has been many cases decided by our Supreme Court which passes on or touches on section 13, article 9 of the Constitution of Missouri in connection with section 12, article 9 of the Constitution of Missouri.

In the case of Little River Drainage District v. Lasater Township Collector, 29 S.W. (2d) 718; 325 Mo. 493, the court held that a township collector was entitled to fees for collecting drainage taxes and held the act set out by the legislature was not unconstitutional as to not applying uniformity to all county officers in connection with article 9, section 12 of the Constitution. In this case also the court held that a statute authorizing county courts to increase county and township collectors fees for collecting drainage taxes was not unconstitutional as authorizing increase in county or municipal officers compensation during terms, in connection with article 14, section 8 of the Constitution. This case was originally brought by the drainage district against the township collector for the reason that he had retained drainage taxes collected during his term and which were allowed as an increase during his term and was unauthorized by the Constitution. The court

held that it was added duties in an incident to his office and the increase during his term of office did not violate the Constitution. This case did not hold that he or a county collector could receive more than the maximum of ten thousand dollars (\$10,000.00) as set out by section 13, article 9 of the Constitution.

In the case of State ex rel. Saline County v. Price et al, 246 S.W. 572, the court held:

"The first question confronting us in the record arises upon the contention of the respondent that section 11036, R.S. 1919, is unconstitutional because it reduces the maximum compensation allowed to public officers, including the sheriffs of the several counties, to be paid out of the fees of the office, to \$5,000 per annum, while section 13, art. 9, of the Constitution fixes the maximum amount at \$10,000.

The constitutional provision referred to is as follows:

"The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

It will be seen that this provision applies to all executive and ministerial officers of the counties and municipalities of the state, and there is nothing in the words in which it is expressed that either fixes the amount of their total compensation or the amount which

they may retain from the fees of their respective offices for such compensation. It is simply a limitation on the maximum amount of compensation which may be allowed them by the Legislature, without interfering with its right to confine the compensation of any one or all of them to what it may consider the actual value of the service rendered in the office. The theory of the provision seems to be that all fees are imposed by the state through its laws, and that when collected by its officers they become the property of the state to be disposed of at its pleasure. This duty of collection may be and is performed by salaried officers as well as by those depending upon the fees for their compensation, and in many instances they bear no relation to the service involved in connection with the matter to which they pertain. The prominent and only idea expressed in this constitutional provision is the protection of the state from unreasonable charges by ministerial and executive officers affected, and to provide for their compensation out of a fund created in the performance of their duties. The only limitation upon the legislative branch of the government, either expressed or implied, is, as we have said, a limitation of the maximum amount of the compensation to be so paid. The provisions of sections 11036 and 11037, R.S. 1919, have no tendency to interfere with that purpose. This point must be ruled against the respondent."

In this case Saline County attempted to collect from the sheriff an amount of fees withheld by the sheriff which was in excess of five thousand dollars (\$5,000.00) per year as allowed by the statute. The amount that the county of Saline attempted to recover was four thousand four hundred sixty eight dollars and twenty two cents (\$4468.22). The court in this case decided solely on the fact that where

the sheriff had received money for the board of prisoners it was not fees under the statute or constitution and the court allowed the sheriff to retain fees up to within five thousand dollars (\$5,000.00) and the amount that he received for the board of prisoners. The court did not hold that he was allowed for extra services beyond the maximum amount set out under the statute.

In the case of State v. Lashly v. Wurdeman, 187 S.W. 257 1.c. 259, the court in its opinion held as follows:

"The Constitution and the statute (Const. art. 9, 13; R.S. 1909, 10734, 10735, 10736) provide and limit all fees which can be retained by the relator, and impose the duty of making quarterly returns, showing the amounts so received, under the penalties prescribed in the statute. It necessarily follows that any excess over the fees thus limited was money belonging to the public and in the custody of such officer until turned over."

Under this decision any excess over the fees limited to ten thousand dollars (\$10,000.00) was money belonging to the public and in the custody of such officer until turned over.

In the case of Greene County v. Grant C. Lidy, 263 Mo. 77, the court held that a probate judge was not a ministerial or executive officer under section 13, article 9 of the Constitution but was classified with the judiciary act of the Constitution and therefore was not limited to the amount of fees set out in section 13, article 9 of the Constitution.

In your letter of request you quote part of section 9935, Division 14 in which you quote that certain fees have been abolished by this section. That part of the letter which you quote only covers the abolishment of fees that are not set out in Division 14 of Section 9935 of the Session Laws of 1937 page 547 which repealed the same section of the Laws of Missouri of 1933 found on page 454.

The only difference of division 14 of Section 9935 of the Act of 1937 repealing 1933 reads as follows:

"On all back taxes and all other delinquent taxes, he shall be allowed a commission of two per cent which shall be added to the face

of the tax bill and collected from the party paying such tax as a penalty in the same manner as other penalties are collected and enforced, which commission the collector shall be entitled to retain as compensation for additional services rendered in collecting delinquent taxes and the amount of said commission shall not be included in computing the maximum salary allowed the collector."

This part of division 14 which was added states that the collector shall be entitled to retain as compensation for additional services rendered in collecting delinquent taxes and the amount of said commission shall not be included in computing the maximum salary allowed the collector. Also in division 14 of Section 9935 of the 1937 Act the legislature provides:

"Said collector shall present for allowance proper vouches 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; and out of the residue of such commissions in his hands after deducting the amount of such vouchers allowed he shall be allowed and authorized to retain, as far as the said residue of such commissions in his hands will permit, a compensation at the rate of ten thousand dollars per annum. Should such residue of commissions be less than sufficient to cover the above compensation, then the entire residue shall be allowed to him, and shall be in full payment for his services. If, however, such residue is more than sufficient to cover such compensation, then the surplus shall be paid over to the state, school, county and city in proportion as the amount collected."

Also in division 14 of Section 9935 of the 1937 Act the legislature provides as follows:

"Collectors of revenue under this subdivision shall keep at all times in their office a notary public, who shall

administer oaths and take notarial acknowledgments in connection with such office without charge. All fees, commissions or other compensations heretofore charged, received or allowed by or to any such collector, as compensation for his services, whether under or by virtue of state law or not, are hereby abolished; and such collector and all his deputies and employes are hereby forbidden, under penalty of forfeiture of office, to collect, charge or receive, directly or indirectly, any fees or commissions in the nature of compensation, or other compensation other than those allowed and authorized by this section."

This partial quotation of section and division refers to any other fees than that set out in division 14 of Section 9935 of the 1937 Act.

There is no question but that part of division 14 of Section 9935, page 550 of the 1937 Act which states that the amount of delinquent taxes for which the collector was allowed a commission of two per cent should not be included in computing the maximum salary allowed the collector, is unconstitutional in connection with section 13, article 9 of the Constitution of Missouri. In the case of *Barker v. St. Louis County*, 104 S.W. (2d) 371, the court held:

"Statute will not be held unconstitutional unless it contravenes organic law in such manner as to leave no doubt of its unconstitutionality, but if there is no such doubt, court, whose duty it is to decide, must declare statute, or part thereof in conflict with Constitution, void.

Invalidity of part of statute does not render remainder invalid, if remainder shows legislative intent and furnishes sufficient means to effectuate that intent."

CONCLUSION

In conclusion will state that in view of all of the authorities above set out, the collector of St. Louis County can not retain an amount greater than ten thousand dollars (\$10,000.00) from all the fees collected by him in any one year.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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