

TAXATION: County Clerk or Deputy in  
the office of County Clerk  
only can collect dog tax fee.  
The law itself is in operation  
upon publication of the notice  
of the favorable election by the  
county court.  
January 27, 1939

No 31



Mr. C. E. Swinney  
Clerk of the County Court  
Linneus, Missouri

Dear Mr. Swinney:

We wish to acknowledge receipt of your request  
for an opinion under date of January 13th, 1939, which  
reads as follows:

"The dog tax law has passed in Linn  
County and it evolves upon me to provide  
methods of payment of taxes and distri-  
bution of tags under Section 12873-4.

"Since it will be inconvenient for  
dog owners to come to my office to pay  
the tax and obtain tags, I am wondering  
if I could appoint an Agent in each town-  
ship to accept same and provide payment  
for making this collection. In providing  
this payment I am willing to permit them  
to retain the 10¢ each for licenses and  
tags provided this fee will remain in my  
possession instead of being turned to the  
County Treasury.

"Will I be permitted to retain fees  
collected upon sale of dog tax licenses  
and where necessary to recompense my Agents  
for the sale of tags and collection out of  
my fees?

"Further, I should like to know at  
what time tags should go on sale for the  
collection of this tax."

Sections 12872, 12873 and 12874, of Article  
12, Chapter 88, R. S. Missouri, 1929, was amended  
by Sections 12872, 12873, 12874, 12874a, 12874b  
and 12874c Laws of Missouri, 1937, Page 224. Section

12874 reads as follows:

"County clerks shall issue licenses to applicants and shall deliver to the applicants a metallic plate having the number corresponding to that of the license stamped thereon and shall deliver to such party a certificate from the book furnished to him by the Secretary of State, which said certificates, as well as the margin or part thereof remaining in the book after cutting out the certificate, shall contain the number of the license, the year for which the same is granted, the name and residence of the owner of the dog, and the sex, color and description of the dog for which the license is paid and the amount of the tax paid therefor. Such clerk shall retain out of the money received for each license issued the sum of ten cents, which shall cover all his services under this article, and he shall pay the balance and all other sums received by him under the provisions of this article, less the cost of license tags, record books, blank applications and affidavits and the cost of transmitting the balance to the treasurer of the county. The treasurer of the county shall set any and all sums so received apart in a separate fund to be known as a 'county dog license fund,' and such fund shall be used only for the purpose of compensating persons who have suffered loss or damage through injury or killing by dogs of any live stock or poultry owned by them and located in said county at the time of such injury or killing, in an amount not to exceed the market value thereof at the time of such injury or killing. The county court of each county in this state is authorized to expend and draw county warrants against such fund only as hereinafter provided. Provided, that this act shall not be construed to prevent suits at law for damages cause to live stock or poultry by dogs."

It will be noted that the statute specifically sets out that the county clerk shall issue licenses to applicants. The statute does not provide for the appointment of deputies to collect the license fee outside of the office of the county clerk. The statute also provided that the clerk shall retain out of the money received the sum of ten cents, which shall cover all his services under the article and he shall pay the balance and all other sums received by him under the provisions of this article, less the costs of license tags, record books, blank applications and affidavits, and the cost of transmitting the balance to the treasurer of the county. Under this statement, first the county clerk shall retain the amount of the fee, which is ten cents, and then retain the actual costs of the license tags etc, but the balance must be transmitted to the treasurer of the county and not be retained by the county clerk.

Section 11811 Laws of Missouri, 1937, page 442, reads as follows:

"It shall be the duty of the clerks of county courts to charge and collect in all cases every fee accruing to their offices by law, except such fees as are chargeable to the county, and such clerk shall, at the end of each month, file with the county court a report of all fees charged and collected during said month stating on what account such fees were charged and collected, together with the names of the persons paying or who are liable for same, which said report shall be verified by the affidavit of such clerk. It shall be the duty of such clerks upon the filing of said report to forthwith pay over to the county treasury all moneys collected by them during the month and required to be shown in said monthly report, taking a duplicate receipt therefor, one of which shall be filed in his office and every such clerk shall be liable on his official bond for all fees collected and not accounted for by him and paid into the county treasury as herein provided."

It will be noticed by the above section that it is the duty of the clerks of the county courts to collect

the fees and make a monthly report, which is to be filed with the county court, stating the amount of the fees and from whom collected. In reading this section and the original section 12874 supra, together, it would be necessary that the county clerk only issue the tags and collect the fee.

Under the original section 12874, supra, the fee of ten cents is to be retained by the county clerk and not by any deputy. In order to receive fees it is necessary that the statute be followed and in the case of State ex rel vs. Wilder, 197 Mo. loc. cit. 32 the court in holding that costs and fees should be collected did not follow the statute, and the court said:

"For many years this court, in obedience to strict statutory provisions, has sedulously maintained that no costs can be taxed except such as the law in terms allows."

The same theory is followed in the payment of claims or fees against the county. Also, in the case of Fischbach Brewing Co. v. City of St. Louis, 95 S. W. (2d) 335, loc. cit. 338, the court said:

"In determining the meaning and intent of a statute it is proper to consider the time of its enactment, the surrounding facts and circumstances, the purpose for which the law was enacted, the cause or necessity which induced its enactment, the prior condition of the law, the mischief sought to be remedied, contemporaneous and prior historical events which may have influenced the enactment; in other words, the judicial interpreters of the law should put themselves as near in the position of the makers of the law as possible in order to more correctly ascertain their intent in its enactment. Sutherland on Statutory Construction (2d Ed.) Section 456, p. 864, Section 471, p. 883."

Also 59 C. J. 961, on the construction of statutes the court said:

"In construing a statute to give effect to the intent or purpose of the

legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally reasonable. Where there is no valid reason for one of two constructions, the one for which there is no reason should not be adopted. The legislature cannot be held to have intended something beyond its authority in order to qualify the language it has used."

(2d) 57, Also, in the case of State vs. Thompson, 5 S. W. loc. cit. 59, the court said:

"A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself."

Section 12881 R. S. Missouri 1929 reads as follows:

"\* \* \*If the majority of the votes cast upon the subject be in favor of license tax on dogs, the county court shall spread the result of such election upon its records and give notice thereof by publication in some newspaper printed and published in such county and such law shall become operative from the time such publication is made."

Mr. C. E. Swinney

-6-

1/27/39

CONCLUSION.

In view of the above authorities it is the opinion of this department that under sections 12873 and 12874, as set out in your request, the county clerk cannot delegate the authority to persons outside of the county clerk's office to collect dog taxes and issue tags for dogs and allow them to retain the ten cents fee which is allowed the county clerk.

It is further the opinion of this department that the balance of the dog license fee, after the deduction of the ten cents to the county clerk and after the deduction of the costs of the tag and the issuing thereof, and the cost of transmitting the balance to the county treasurer, should be paid in monthly to the county treasurer.

In answer to your inquiry as to the time tags should go on sale for the collection of the dog tax I am enclosing an opinion rendered by this office on November 18th, 1938, to Edward V. Long, Prosecuting Attorney of Pike County, which states the method of the publication of the law and the procedure for declaring the dog tax law in effect. This opinion states the procedure and form of publication.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General.

WJB:RW  
Enc. 1

APPROVED:

COVELL R. HEWITT  
(Acting) Attorney General.