

COUNTY COURTS: Contract made by county court and collector giving
ten per cent contingent fee to attorney for collecting
COLLECTORS: delinquent liquor license and merchants' license
taxes is illegal.

June 27, 1940

Mr. Harold Fenix
County Collector
Jasper County
Carthage, Missouri



Dear Sir:

We have received your letter of June 8th, which
reads as follows:

"Enclosed please find a copy of a contract made and entered into, on the 30th day of November, 1939, between Nelson Evans, an attorney of this city, and me as Collector of Revenue for Jasper County, Missouri, and approved by the County Court of Jasper County, Missouri. This contract provides in substance that Mr. Evans, as attorney, may retain 10 per cent of collections made on delinquent liquor license. The contract also mentions merchant's license, but no payment of any 10 per cent has been made to him on any merchant license.

We request an opinion from you as to whether this contract is valid, and whether it protects me as County Collector of Revenue.

I note that by Section 25, Laws of Missouri for 1935, page 276, that counties are given authority to license these businesses, and it states that the holder of a permit or license shall pay the fee into the County Treasury. It makes provision in the latter part of the section for the collection of such license, but this seems to be limited

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to cities.

Will you specifically advise whether if I deducted 10 per cent of the money collected on delinquent licenses, and pay it directly to Mr. Evans, I will be protected from any claim made by the County Court, now, or in the future, particularly upon the making of an audit of my office."

It is unnecessary to further set out the terms of the contract, which is two pages in length, since you have accurately described its terms in your letter. Briefly stated, the exact question you ask is whether a county collector, with the approval of the county court, may enter into a valid contract with an attorney whereby the attorney agrees to collect delinquent merchants' license and liquor license taxes and retain ten per cent of the collections as his fees.

We are of the opinion that neither you, as the collector, nor the county court has the authority to enter into such a contract. We have examined the Liquor Control Act and also the laws providing for merchants' licenses, and we find no statutory authority authorizing the employment of an attorney either on a contingent fee basis or otherwise for the collection of such delinquent taxes. The law does authorize the appointment of an attorney to collect the delinquent real property taxes, as well as personal property taxes, but we find no law authorizing such an appointment and contract in connection with delinquent license taxes of the kind you mention. In this connection, it has long been the law in this state that the county court, as well as the county officers, is not the general agent of the county and its powers are limited to those expressly granted by law, and that the acts of the county court are void when done with no statutory authority whatsoever. This rule is announced by the Supreme Court in the late case of *Morris v. Karr* 114 S. W. (2d) 962, in the following language, l.c. 964:

"In *Sturgeon v. Hampton*, 88 Mo. 203,

at page 213, the rule was early announced which has been generally recognized in this state as follows: 'The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' The court goes on to say that it should go far to uphold the acts of the county court when they are merely irregular, but such acts are not irregularities and are void when made without any warrant or authority in law."

In the case of King vs. Maries Co. 249 S. W. 418 (Sup. Ct. of Mo.) the owner of a set of abstract books brought suit against Maries County and the individuals composing the county court to recover \$654.00 alleged to be due for making and delivering a list of all names of owners and true descriptions of lands, embraced in one hundred eighty four separate tax bills, at the rate of \$3.50 for each tax bill. The county court by order had agreed to pay these amounts. No statute then existed authorizing such a contract or expenditure. In disallowing the claim, the court said, l.c. 420:

"The action of the county court assumed to cast upon the county an unauthorized charge. 'This state, by law, has made ample provision for the collection of its revenue for all purposes. In the exercise of its prerogative, it makes use of certain officials, designated as county officers, to whom are assigned specific duties, and, among others, the county courts. But this statute confers no power upon the county court to cast upon the county the burden or cost of such collection.' Butler v. Sullivan County, 108 Mo. loc. cit. 638,

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18 S. W. loc. cit. 1144, and in the same opinion, 108 Mo. loc. cit. 637, 18 S. W. loc. cit. 1144. 'Besides the revenue law is, in itself, a complete system prescribing service, and providing compensation for such service, and such compensation is necessarily exclusive. Hubbard v. Texas Co., 101 Mo. 210; Harris v. Buffington, 28 Mo. 53.'"

CONCLUSION

It is our conclusion, therefore, that since the county courts, as well as other county officers, are not general agents and have no authority except that which is expressly granted them by statute, and since no statute gives the right to either the county courts or county collectors to employ an attorney on a contingent fee basis, or otherwise, to collect delinquent liquor license and merchants' license taxes, that said officers, including the county court as such, are without authority to enter into or approve any such contract.

Respectfully submitted,

J. F. ALLEBACH
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General
JFA:RT