

COUNTY TREASURER AND Section 11106 applies to compensation as  
EX OFFICIO COLLECTOR: ex-officio collector and section 13450  
does not.

March 29, 1941

Honorable L. A. Pickard  
Presiding Judge  
Dunklin County Court  
Kennett, Missouri



Dear Sir:

This will acknowledge receipt of your letter of March 17, 1941, in which you ask for an opinion setting forth the fees which the treasurer and ex officio collector of Dunklin County is permitted to collect and retain in this office, and making specific inquiry as to whether the provisions of Section 13450, R. S. Missouri, 1939, would apply.

Section 13993, R. S. Missouri, 1939, Article XI, Chapter 101, relating to the compensation of the treasurer and ex officio collector in counties under township organization is as follows:

"The county treasurer in counties adopting township organization shall be allowed a salary of not less than \$100.00, per month by the county court to be paid as at present provided by law; the county collector for collecting and paying over the same shall be allowed a commission of two per cent on all corporation taxes, back taxes, licenses, merchants' tax and tax on railroads, and two per cent on all delinquent taxes, which shall be taxed as costs against such delinquents and collected as other taxes: Provided, he shall receive nothing for paying over money to his successor in office."

In addition to this section there are numerous other fees which a county collector is authorized to charge and collect found at various places in the statutes. Some of these are charges that are not frequently made. The numbers of these sections are not herein set out. A fee is prescribed in connection with the collection of income tax; for issuing auctioneer's license; for taking merchant's bond and statement; for notice of delinquent personal tax; for collecting delinquent city and town tax; for services in connection with delinquent stray list; for services in connection with the license of billiard and pool tables; for issuing ferry licenses and there may be some of these charges we have overlooked.

Inasmuch as these last mentioned items are in different articles and chapters of the statutes from the article and chapter in which section 13993, supra, is contained, the view might be advanced that these last mentioned fees would not apply to the office of treasurer and ex officio collector in counties under township organization. However, the writer thinks that all fees which are authorized to be charged by collectors should be charged and collected by the treasurer and ex officio collector of Dunklin County, unless there is some specific exemption for some fee. It is well settled law that in considering and construing statutes, all statutes on the same subject should be read and considered together. These are all items of fees of collectors as are the items set out in Section 13993, supra.

In the case of State ex rel. Davidson, v. Railway Co. 334 Mo. 127, l. c. 132, the court said:

"The sections relate to the same subject, and although in different chapters, should be considered together in construing Section 12316. (In the matter of State ex rel. Bank v. Davis, 314 Mo. 373, l. c. 388, 284 S. W. 464)."

In the case of State ex rel. Bank v. Davis, 314 Mo. 373, l. c. 387-388, the court said:

"Sections 1177 and 1180 should be construed together and a meaning given to each which will not destroy the other, if this can be done. Notwithstanding what was said in State ex rel. v. Gantt, supra, said sections of the statute should be held in pari materia. The general rule is thus laid down in 36 Cyc. 1147:

"Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things. In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. The endeavor should be made, by tracing the history of legislation on the subject, to ascertain the uniform and consistent purpose of the Legislature, or to discover how the policy of the Legislature with reference to the subject-matter has been changed or modified from time to time. With this purpose in view therefore it is proper to consider, not only acts passed at the same session of the Legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed. So far as reasonably possible, the statutes, although seemingly in conflict with each other, should be harmonized, and force and effect given to each, as it will not be presumed that the Legislature, in the enactment of a subsequent statute, intended to repeal and earlier one, unless it has done so in express terms; nor will it be presumed that the Legislature intended to leave on the

statute books two contradictory enactments.'

"This is the rule in Missouri. (Grimes v. Reynolds, 184 Mo. 679, l. c. 688.)"

Section 13450, R. S. Missouri, 1939, mentioned in your letter is as follows:

"The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. The foregoing clause shall not apply to any county or city not within a county in this state now containing or which may hereafter contain one hundred thousand inhabitants or more. After the first day of January, 1891, 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 the truth, such officer shall be liable to the penalties of willful and corrupt perjury."

The only case we have been able to find in which this section is called in controversy is the case of State ex rel. Saline County v. Price, 296 Mo. 121, in which the constitutionality of the act was upheld. The court further ruled the amounts paid by the county court to the sheriff for boarding prisoners were not fees, and that fees did not include reimbursement for expense incurred in the discharge of official duties.

This section is general in its application and would apply to the treasurer and ex officio collector of Dunklin County unless there is some special law which would remove the treasurer

and ex officio collector from the operation of this section.

In the case of Collins v. Twellman, 344 Mo. 330, 1. c. 334, the court said:

"Appellant concedes that when one of two conflicting statutes must prevail then all else being equal a special statute must take precedence over the general law; also that all else being equal later statutes take precedence over earlier statutes."

In Article VIII of Chapter 74, R. S. Missouri, 1939, is found Section 11106 fixing the compensation of the collectors. The first paragraph of which section is as follows:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more: \* \* \* \* \*"

Then follows fourteen paragraphs classifying counties according to the amount of taxes levied for the purpose of fixing the commission of collectors. Paragraph 15 of this section is as follows:

"For the purpose of enabling the state auditor to determine the compensation of the collector to be paid by this state, it is hereby made the duty of the clerk of any county court, immediately after such annual settlement made by the collector, to make out and forward a statement

to the state auditor, under the seal of the court, showing the aggregate of all such taxes and licenses levied for the year for which such settlement was made, including therein local, special and school and all other taxes: Provided, that no collector except as provided in subdivision fourteen herein, shall be allowed to retain commissions and fees in any one year in excess of the following amounts: In any county coming within the provisions of subdivisions one to seven, inclusive, hereof not more than \$2,500.00; in any county coming within the provisions of subdivision eight, not more than \$3,000; in any county coming within the provisions of subdivision nine, not more than \$3,500.00; in any county coming within the provisions of subdivision ten, not more than \$4,000.00; in any county coming within the provisions of subdivision eleven, not more than \$4,500.00; in any county coming within the provisions of subdivision twelve, not more than \$5,000.00; in any county coming within the provisions of subdivision thirteen, not more than \$5,500.00; and all fees and commissions coming into the hands of any collector from any source whatever in excess of the amounts herein specified except as provided in subdivision fourteen, shall be paid into the city, county and state treasuries in proportion to the amount received on taxes collected for each; and it shall be the duty of each collector, once in each year, to file in the county court in each county and in the office of the comptroller of each city not in a county, a statement, under oath of the amount of fees and commissions received by him and from what source, and shall immediately pay over the excess according to the order of county court or comptroller: Provided, however, that this section SHALL not apply to any county adopting township organization, so far as concerns the rate

March 29, 1941

of per cent to be charged for collecting taxes, but shall apply to counties under township organization so far as to limit the total amount of fees and commissions which may be retained annually by the county treasurer and ex officio collector for collecting taxes in such counties; Provided, that the limitation on the amount to be retained as herein provided shall apply to fees and commissions on current taxes, but shall not apply to commissions on the collection of back and delinquent taxes and ditch and levee taxes, and the compensation of the county collector for the collection of levee taxes and ditch taxes, collected for drainage purposes, shall be one per cent of the amount collected." (Underscoring ours).

This last section is a special section applying to collectors only, while Section 13450, R. S. Missouri, 1939, mentioned in your letter is general. It is the belief of the writer that Section 11106, R. S. Missouri, 1939, being a special section applying only to collectors, the amount of compensation therein limited would prevail over the limit fixed by Section 13450, R. S. Missouri, 1939.

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169,270  
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Very truly yours,

APPROVED:

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