

COLLECTORS: In Section 11056, R. S. Mo. 1939, the words "calendar week" mean a period from Sunday to Saturday, and the words "year immediately preceding his election or appointment" mean the twelve months preceding the election or appointment and not the last calendar year.

January 25, 1943



Mr. George O. Dalton
Collector of Marion County
Hannibal, Missouri

Dear Sir:

We have your letter of recent date, in which you request an opinion, in the following language:

"I have been discussing the question of my bond for the coming year and in this connection my attention has been called to Section 11056, R. S. of Missouri, 1939, and particularly that part that provides 'that the amount of the bond shall be determined by a sum equal to the largest collections made during any calendar week of the year immediately preceding the election, plus ten per cent of said amount.' The other provision of Statute concerning a depository bond and my deposits under a 'County Collector's Fund' are being complied with in this county.

"There are two questions that arise and I respectfully ask the opinion of your department on the following:

1. What is meant by a calendar week?
2. What is meant by the year immediately preceding the election; does it mean 365 days preceding the election in November or the calendar year of 1941?"

We shall answer your questions in the order listed in your letter.

I.

What is meant by a calendar week?

In 62 C. J. 972, Section 21, we find the following:

"The word 'week,' both in law and in common conversation or writing, has two separate and distinct meanings. In its most accurate sense a week means a calendar week, or, as it has been termed, a biblical week, and is a definite period of time, commencing on Sunday and ending on Saturday, a particular period of time commencing immediately after twelve o'clock Saturday night and ending at twelve o'clock Saturday night seven days thereafter; seven consecutive days beginning with Sunday.

"In a broader sense 'week' has been termed a secular week, and as meaning a period of seven consecutive days beginning with any day, and it has been so defined by statute; and the week does not expire until seven full days have elapsed."

Again, on page 973 of the same Volume, we find the following:

"Where the word 'week' is used in a statute, judicial proceeding, or contract, the question as to which of the above two meanings is intended in any particular case is dependent largely upon the context in which it is used and the object to be attained by its use. Ordinarily, however, as so used

'week' means a calendar week extending from Sunday to Saturday, inclusive, unless it is apparent from the context and surrounding circumstances that it was intended to mean not necessarily a calendar week, but a period of seven days, or to refer to a week of six secular days only."

Likewise, the Supreme Court of Missouri, in the case of Russell v. Croy, 164 Mo. l. c. 93, has defined the word "week" as follows:

"The word 'week' in its most accurate sense means seven consecutive days beginning with Sunday; in that sense it is most usually used."

It will be seen from the foregoing that when the word "week" is used, it ordinarily means a period of time beginning with Sunday and ending with Saturday. Much more would that period of time be meant when the words "calendar week" are used. The words "calendar week" mean a week as marked off on the calendar. In Words and Phrases, Perm. Ed., Vol. 6, page 11, we find the following definitions of the term "calendar week":

"A calendar week is a block of seven days registered on the calendar in general use, beginning with Sunday and ending with Saturday."

"In construing statute containing term 'calendar week,' that term ordinarily refers to period of time from Sunday to Sunday as it appears on calendar, although term may consist of any seven days of given month, where language employed makes it clear such was intention of contracting parties or Legislature."

It is thus seen that the words "calendar week" ordinarily refer to a period of time beginning on Sunday and ending on Saturday.

Section 655, R. S. Missouri, 1939, provides in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import; * * * *"

We find nothing in the context of Section 11056, R. S. Missouri, 1939, which indicates that the legislature had in mind any meaning for the words "calendar week" different from their ordinary and usual meaning.

CONCLUSION

It is, therefore, the opinion of this office that the words "calendar week" as used in Section 11056, R. S. Missouri, 1939, mean a period of time beginning with Sunday and ending with Saturday.

II.

What is meant by the year immediately preceding the election; does it mean 365 days preceding the election in November or the calendar year of 1941?

That part of Section 11056, R. S. Missouri, 1939, which uses the language inquired about reads as follows:

" * * * Provided further, that when such deposits are so required to be made, such county courts may also require that the bond of the county collector in such counties shall be in a sum equal to the largest collections made during any calendar week of the year immediately preceding his election or appointment, plus ten per cent of said amount: * * * *"

Section 655 of the Statutes, quoted from above, further provides as follows:

" * * * third, the word 'month' shall mean a calendar month, and the word 'year' shall mean a calendar year, unless otherwise expressed, and the word 'year' be equivalent to the words 'year of our Lord;' * * * *"

By our own statutes, therefore, we must ascribe to the word "year" the meaning of "calendar year" unless another meaning is expressed or unless such meaning would be repugnant to the context of Section 11056.

In Glasgow v. Rowse, 45 Mo. l. c. 487, the Supreme Court of our state recognized the same rule of construction, but recognized that there were cases in which the word "year" did not mean "calendar year." The court there said:

"Unless otherwise expressed, the word 'year' will always be intended to mean a calendar year; but when applied to matters of revenue, the presumption is in favor of it referring to a fiscal year."

Again, in State ex rel. v. Allison, 155 Mo. 1. c. 330, the Supreme Court, after quoting the provisions of what is now Section 655 of the Statutes as to the meaning of the word 'year,' said:

"That an artificial year for a particular purpose may be designated either in a matter of private contract or a public act, is unquestioned, and it is not unusual that such is the case in statutes relating to the public revenue."

So, we see that our Supreme Court has not hesitated to ascribe to the word "year" a different meaning than "calendar year" when the context of a statute indicates that the legislature had a different meaning in mind. The courts of other states have held likewise. In Sims v. City, 190 Wash. 62, 66 Pac. (2d) 863, 864, the court said:

"Ordinarily, the term 'year,' when used in a statute, is presumed to refer to the calendar year. Virginia-Carolina Chemical Co. v. Wellbrock, 143 S. C. 51, 141 S. E. 103. But if the context in which it is used indicates that the legislative intent was otherwise, the term may be construed to mean 'fiscal year,' a period of 365 days, or 12 months. (Cases cited.) "

Many Missouri statutes could be cited in which the context clearly shows that the word "year" as used therein could not have been intended to mean "calendar year." For instance, Section 1517, R. S. Missouri, 1939, provides that no person shall be entitled to a divorce who has not resided within the state "one whole year next before the filing of the petition." No one has ever contended that the word "year" in such statute meant "calendar year," but it has always been construed to mean the twelve months immediately preceding the day on which the petition is filed. Likewise, statutes of limitation all provide that no action shall be had unless commenced within

a certain number of years after the cause of action has accrued. The word "years" in such statutes has always been construed to mean periods of twelve months after the date of the accrual of a cause of action. Many other such statutes could be referred to.

It, therefore, becomes necessary for us to consider the context of the statute in which the words inquired about are used. The purpose of the proviso quoted above, in which the language inquired about appears, is to provide some rule by which the amount of the collector's bond shall be determined. It should be noted that the legislature used the term "calendar week" in that very same proviso. If the legislature, in referring to the "year" in that proviso, had meant the "calendar year," it would seem that they would have so specified, since they did specify what kind of week they meant. On the contrary, the legislature used the words "year immediately preceding his election or appointment." The word "immediately" is defined in Webster's New International Dictionary as meaning "without interval of time." Applying this meaning to the word as used in the proviso under consideration, the language would mean the year which runs right up to the date of the election of the collector, or the year between which and the date of the election there is no interval of time. Had the legislature meant "calendar year," they could have expressed such meaning by using the word "calendar" before the word "year," as they did in connection with the word "week," or they could have said "the year before the year of his election." By using the language, "the year immediately preceding his election," we think the legislature meant the twelve months prior to the date of his election.

Our construction, as above set out, is in line with decisions from courts of other states. For instance, in the case of *People v. Escheman*, 165 Pac. 260, (Colo.), the court held that in a statute providing that every citizen owning agricultural land within a certain district who had paid property taxes within such district "during the year preceding" such election shall be entitled to vote, the words "year preceding" meant the twelve months preceding the election and not the calendar year preceding the election.

Likewise, in the case of *Paetz v. State*, 107 N. W. 1090, (Wis.), the court, in construing a statute which provided that if a person should be convicted a second or subsequent time for the same offense during any year, the punishment should be

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increased, held that the words "during any year" meant the ensuing year from the date of the first conviction and not a calendar year.

CONCLUSION

It is, therefore, the opinion of this office that the words "year immediately preceding his election or appointment" as used in Section 11056, R. S. Missouri, 1939, mean the twelve months prior to the date of the election or appointment of the collector and not the last calendar year before such election or appointment.

Respectfully submitted

HARRY H. KAY
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APPROVED:

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