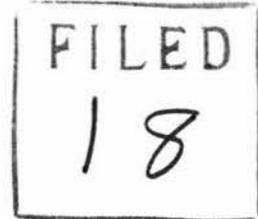


COUNTY TREASURERS: Must pay deputy and clerical hire from own  
TOWNSHIP ORGANIZATION: compensation.

September 17, 1949

Honorable Clyde E. Combs  
Prosecuting Attorney  
Barton County  
Lamar, Missouri



Dear Sir:

This office is in receipt of your request for an official opinion in which you inquire as to the liability of Barton County for the compensation of an employee of the treasurer and ex-officio collector of Barton County, which is a county maintaining township organization. In subsequent correspondence you have advised that the individual in question was in fact a clerk during all of the times covered by your request, and so considered by the Collector, who never included an item for the compensation of such clerk in his budget.

You refer in your request to an opinion rendered by this office under date of October 3, 1945, to the Honorable George A. Spencer, then Prosecuting Attorney of Boone County, but which may be distinguished from the instant question by reason of the fact that it involved an outlay for stenographic assistance and clerical expense where the statutes of Missouri were silent on the question of the compensation of such expense incident to the office.

In the matter of clerical and deputy hire for the office of treasurer and ex-officio collector in counties such as Barton County, having township organization, Section 11107, R. S. Mo. 1939, provides:

"That the officers referred to in section 11106, in addition to the maximum amount of fees and commissions permitted to be retained by county collectors as provided in section 11106, Revised Statutes of Missouri for 1939, each such officer may retain for the payment of deputy and/or clerical hire a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions which such officer is permitted to retain by said section as so amended, but such deputy and/or clerical hire shall be payable out of fees and commissions earned and collected by such officer only and not from general revenue. Laws 1935, p. 406."

If this section is applicable to the office of treasurer and ex-officio collector under township organization, then it clearly defines the compensation which may be paid for a clerk in the position set out in your request, with the supplemental information given. If such office is mentioned in Section 11106, referred to in the above quoted section, then the answer is clear. Section 11106, R. S. Mo. 1939 does refer to such office in the following language:

"\* \* \* Provided, however, that this section shall not apply to any county adopting township organization, so far as concerns the rate 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: \* \* \*"

A recent decision by the Supreme Court of this State involved the salary of a deputy to the treasurer and ex-officio collector of Stoddard County and the two statutes above referred to were discussed by the court. In *Alexander v. Stoddard County*, 210 S.W.(2d) 107, literal interpretation was given to Section 11107, supra, the decision stating: (l.c. 109)

"The precise question is not before us and for that reason we do not pass upon whether these sections authorize deputies for ex officio collectors in counties undertownship organization. But, whether they do or do not authorize such deputies, they plainly indicate the source of their pay and limit it to "fees and commissions earned and collected by such officer only and not from general revenue." There is no allegation in the plaintiff's petition taking his claim out of this section, regardless of the necessity and reasonableness of the expenditure.

"(2,3) In any event the legislature has the power to fix and limit the salaries of deputies and "As a general rule compensation for services rendered by assistants, deputies, and other employees can be allowed directly to them or to their superiors only as authorized by law; and where no provision is made for the

payment, or for the appointment or employment of deputies and assistants, the latter must look exclusively to their employers for compensation, and such employer cannot look to the county for reimbursement.\* \* \* Under other statutes deputies are to be paid by the principal out of the fees received by him in excess of the amount which he is to retain for himself, and the county is not liable for the salaries of such deputies. 20 C.J.S., Counties, Secs. 122, 129; 43 Am. Jur., Sec. 465, p. 222; Gage County v. Wilson, 38 Neb. 165, 56 N.W. 810."

The same decision points out the distinction referred to in the second paragraph of this opinion, between those cases following *Howell County v. Rinehart*, 348 Mo. 421, 153 S.W.(2d) 381 (which was the deciding authority in the *Spencer* opinion), and those following *Ewing v. Vernon County*, 216 Mo. 681, 116 S.W. 518. The latter line of cases limits compensation to that provided by statute, and must govern in the instant case.

CONCLUSION

It is therefore the conclusion of this office that the treasurer and ex-officio collector of Barton County, a county having township organization, is required to pay all deputy and clerical hire pertaining to his office from a sum not exceeding twenty-five per cent of the maximum amount of fees and commissions which such treasurer and ex-officio collector is permitted to retain, and that such deputy and clerical hire may not be paid from general revenue.

Respectfully submitted,

ROBERT L. HYDER  
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APPROVED:

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