

COUNTY TREASURERS:
EX-OFFICIO COLLECTORS:

Provisions of House Bill No. 80 not applicable to incumbent treasurers and ex-officio collectors.

July 11, 1949



Honorable Marvin C. Hopper
Prosecuting Attorney
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Brookfield, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"Under the provisions of House Bill No. 80 recently enacted by the Legislature and signed by the Governor, will incumbent County Treasurers be permitted to collect the commission increases as provided by said Bill after the effective date of said Bill."

House Bill No. 80 of the 65th General Assembly, repealing and reenacting Section 13993, R. S. Mo. 1939, provides in part 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 ex officio collector for collecting and paying over the same shall be allowed a commission of three per cent (3%) on all corporation taxes, back taxes, licenses, merchants' tax and tax on railroads, and two per cent (2%) 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."

The only change in such reenacting section is to increase the commission on corporation taxes, back taxes, licenses, merchants' tax and tax on railroads from two per cent to three per cent. Section 13, Article VII, Constitution of Missouri, 1945, provides as follows:

"The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

In the case of Little River Drainage District vs. Lassater, 29 S.W. (2d) 716, the Supreme Court held that a statute authorizing an increase in the compensation of township collectors by authorizing the collectors to retain a greater percentage of drainage and levee district taxes did not violate Section 8 of Article XIV of the Constitution of 1875, which section was the forerunner of Section 13 of Article VII of the present Constitution quoted supra. The court said, l.c. 719:

"Appellant contends that section 4575 authorizes an increase in the compensation of township collectors during their terms of office and hence violates section 8, of article 14, of the Missouri Constitution, which provides that 'the compensation or fees of no State, county or municipal officer shall be increased during his term of office. * * * ' As neither county collectors nor township collectors, in respect to their services, in collecting the taxes of drainage districts, perform any of the duties of state, county, or municipal officers, it would seem that the fixing of their compensation for rendering such services to drainage districts is not controlled by section 8, art. 14, of the Constitution.

"The constitutional inhibition only applies to compensation or fees of officers for performing duties incident to their offices, and has no application to additional duties imposed upon such officers not ordinarily incident to their offices. * * * *

"The collection of drainage district taxes is no part of the duties ordinarily incident to the office of county and township collectors. Such duties are additional duties dependent upon the existence of a drainage district having lands, taxable for district purposes, lying within the territorial jurisdiction of such officers. In collecting

such taxes, county and township collectors are officers and agents of the particular drainage district. They are required to give separate bonds to such district. Section 4396, R. S. 1919. The provisions of section 8, art. 14, of the Constitution, are not violated by section 4575."

Since the collection of corporation taxes, back taxes, licenses, merchants' tax and tax on railroads is incident to the office of treasurer and ex-officio collector in counties under township organization, we believe it to be clear that the provisions of Section 13, Article VII of the Constitution of Missouri, 1945, prohibit the treasurers and ex-officio collectors, who are in office upon the effective date of House Bill No. 80, from receiving during their present terms the compensation provided for therein.

CONCLUSION

It is the opinion of this department that the provisions of House Bill No. 80 of the 65th General Assembly will not be applicable to the incumbent treasurers and ex-officio collectors in counties under township organization during their present terms of office.

Respectfully submitted,

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APPROVED:

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CBB:VLM