

COUNTY COLLECTOR: Amount of official bond of county collector
OFFICIAL BOND: to be based on largest total collection
CONSTITUTIONAL LAW: during any one month of year preceding election.
Provision of section 52.020 RSMo 1949 classifying
counties of less than 85,000 population into
a class, invalid, being in violation of Article
VI, Section 8 of Constitution adopted in 1945.

January 16, 1951

*Constitutional invalidity cured by
HB 193 66th General Assembly, Bill
effective Feb 27, 1951. C.B. Burns*

Honorable J. L. Bess
Prosecuting Attorney for Howell County
West Plains, Missouri

FILED
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C.B. Burns

1-19-51

Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office. Your request reads as follows:

"The County Court here seems confused over the amount of bond that the county collector should furnish and they have asked this office for an opinion. While I have not studied the matter closely, there seems to be some conflicting and confusing statutes in connection with the matter and I would like to ask that you look into it and render me an opinion at the earliest date possible.

"We desire a conclusion of Section 11056, Revised Statute Missouri 1939. It is our contention that the bond of the collector under daily deposit may be based on the sum according to the largest collections made during any calendar week plus 10% during the year of the election or appointment of the County Collector. We would like to know if such a bond could be had on a newly elected County Collector?"

RS Mo. 1949, Section 52.020 (found in RS Mo. 1939, Section 11056, as amended by Laws of Missouri 1943, p. 1062) provides for the county collector in the class of counties in which Howell County is classified to give an official bond in the following terms.

"Every collector of the revenue in the various counties in this state, and the collector of the revenue in the city of St. Louis, before entering upon the duties

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of his office, shall give bond and security to the state, to the satisfaction of the county courts, and, in the city of St. Louis, to the satisfaction of the mayor of said city, in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent of said amount; provided, however, that no collector shall be required to give bond in excess of the sum of seven hundred and fifty thousand dollars, conditioned that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years next ensuing the first day of March, thereafter, and that he will in all things faithfully perform all the duties of the office of collector according to law. The official bond required by this section shall be signed by at least five solvent sureties; provided, that in all counties which now have or which may hereafter have a population of less than eighty-five thousand inhabitants, according to the last preceding federal decennial census, the county court in such counties may require the county collector thereof to deposit daily all collections of money in such depository or depositories as may have been selected by such county court in accordance with the provisions of sections 110.130 to 110.160, RSMo 1949, to the credit of a fund to be known as 'County Collector's Fund,' and such depository or depositories shall be bound to account for the moneys in such county collector's fund in the same manner as the public funds of every kind and description going into the hands of the county treasurer and under the same depository bond as required to be given under section 110.160, RSMo 1949; 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 the 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; provided further, that no

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such county collector shall be required to make daily deposits for such days when his collections do not total at least the sum of one hundred dollars; and provided further, the collector shall not check on such county collector's fund except for the purpose of making the monthly distribution of taxes and licenses collected for distribution as provided by law or for balancing accounts among different depositaries." (Underscoring ours)

You will note particularly from this section that the county collector in a third class county, before entering upon the duties of his office shall give bond in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent of said amount.

This statute, which was enacted before the present state constitution was adopted in 1945, then makes a further provision applicable to those counties having a population of less than eighty-five thousand inhabitants that the county court may in its discretion by order require the county collector to deposit daily all collections of money in such depository as may be selected by the county court; and in such counties wherein deposits are so made daily the county court may also require that the bond of the county collector shall be in the 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.

The state constitution adopted in 1945 contains a provision not found in the preceding state constitution cited as Article VI, Section 8, and reading as follows:

"Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

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The portion of Section 52.020 RSMo 1949 which is based on a classification of counties of less than eighty-five thousand inhabitants is not a law applicable to all counties in a given class and violates the requirement of the constitution that all counties within the same class shall possess the same powers and be subject to the same restrictions and is, in the opinion of this department, invalid.

In the case of State v. Kiburz, 208 SW (2d) 285, decided by the state Supreme Court in December 1947, the court had before it a statute containing a proviso making the county surveyor the ex officio county highway engineer in all counties having more than 50,000 inhabitants, taxable wealth in an excess of \$45,000,000 and either adjoining or containing a city of more than 100,000 inhabitants, which the court held in violation of the 1945 state constitution as not being a "general law" within the constitutional provision requiring law applicable to any county to apply to all counties in the class to which such county belongs. In that case the court wrote:

"Section 8, Art. VI of the 1945 Constitution introduced into the organic law a new requirement with respect to legislation governing the structure of county government, and so necessitated a general overhauling of the whole body of statute law concerning that subject, for absent classification of counties (and none existed theretofore within the meaning of this constitutional provision), there could be no valid legislation governing their organization and powers, subsequent to July 1, 1946. In obedience to this constitutional mandate, the 63rd General Assembly enacted Committee Substitute for House Bill 476, effective December 5, 1945, because of an emergency clause, which classified all of the counties of the state into four classes, basing the same on assessed valuation, and declaring such classification to be "the foundation upon which the whole structure of county government and laws relating thereto rests."

"The second proviso to Section 8660 was in the nature of a limitation upon the

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power conferred upon the county court under Section 8655. Its object was to except something out of the terms of that grant of power. A proviso can have no existence apart from the provision it is designed to limit or qualify. So, even assuming that the later enacted classification act was sufficient to validate pre-existing Section 8655 as a general law defining the power of counties (with respect to the office of county highway engineer), under Section 8, Art. VI of the Constitution, because applicable alike to every county in the state, the proviso would have to fall because it is neither applicable to all of the counties of the state, nor to any particular class or classes of counties, as defined by the classification act, and, hence, is in no sense a general law within the meaning of the constitutional provision we are considering."
(Underscoring ours)

The proviso contained in section 52.020, RSMo 1949 which relates to counties of less than 85,000 inhabitants likewise was rendered invalid, being contrary to the provision of the constitution adopted in 1945, because it is neither applicable to all the counties of the state, nor to any particular class or classes of counties, as defined by the classification act, and, hence, is in no sense a general law within the meaning of the constitution provision quoted above.

While the provision of section 52.020, RSMo 1949 allowing the county court in counties of less than eighty-five thousand population to require the county collector to make daily deposits and also provided the bond of the county collector in such county shall be in the sum equal to the largest collections made during any calendar week of the year preceding his election is in violation of the constitution and invalid, the invalidity of this part of the section does not render the portion of the section invalid which requires the county collector to give bond in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent of said amount.

CONCLUSION

A county collector in third class counties is required by section 52.020, RSMo 1949, (cited as RSMo 1939, Section 11056;

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amended Laws of Missouri 1943, p. 1062) to give bond in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent of said amount.

That portion of the statute which classifies counties having less than eighty-five thousand inhabitants into a group or class and providing in such counties the county court may require the county collector thereof to deposit daily all collections and also require the bond of the county collector in such counties to be in the 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, was rendered invalid by Article VI, Section 8, of the 1945 constitution, because it is neither applicable to all the counties of the state, nor to any particular class or classes of counties, as defined by the classification act which establishes counties into classes.

Respectfully submitted,

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Assistant Attorney General

APPROVED



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