

COUNTY COLLECTORS,
SECOND CLASS COUNTIES:

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The county court in second class counties may require a county collector to make bond in a sum equal to the largest collections made in any one month of the preceding year, plus ten percent of such sum, up to but not to exceed the sum of \$750,000. If the county court in second class counties requires the county collector to make daily deposits of all monies received by him on those days when such collections total as much as \$100.00, they may then permit him to make bond in a sum equal to only one-fourth of the largest amount collected during any one month of the preceding year, plus ten percent of such amount, up to but not to exceed the sum of \$750,000.

March 28, 1951

4/2/51

Mr. Gordon Shaffer, Jr.
Assistant Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Mr. Shaffer:

This office is in receipt of your recent request for an official opinion. You thus state your opinion request:

"Our County Collector, Mr. Clifton Hurst, brought into my office House Bill #193, which was passed by the present Legislature, repealing section 52.020, Revised Statutes of Missouri 1949, relating to bonds of County Collectors, and enacting in lieu thereof, a new section relating to the same subject to be known as Section 52.020.

"This bill, as passed, specifically includes Second Class Counties in setting out the amount and method for the County Court to provide for the bonds of County Collectors.

"Section 52.380, which applies specifically to Class 2 Counties, states that the bond of the County Collector in all Class 2 Counties shall be not less than \$50,000.00 nor more than \$750,000.00, the amount of said bond to be fixed by the County Court.

"Since the House Bill hereinbefore mentioned states that the County Collector's bond shall be in the sum equal to one-fourth of the largest amount collected during any one month

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of the year immediately preceding his election or appointment, plus 10% of said amount, the bond for our County Collector will run in an amount greatly exceeding his bonds of the past.

"Would you kindly submit an opinion to this office as to which section our County Court should proceed in determining the amount of our County Collector's bond. It seems that since the recent passage of Section 52.020 that we now have two inconsistent statutes relating to bonds of County Collectors."

You are correct in stating that House Bill No. 193, which has become a law, repeals Section 52.020, RSMo 1949. House Bill No. 193 reads as follows:

2 Section 1. That section 52.020, RSMo 1949, be and the
3 same is hereby repealed and one new section be enacted in
4 lieu thereof to be known as section 52.020, and to read as follows:

2 52.020. Every collector of the revenue in the various
3 counties in this state, and the collector of the revenue in
4 the city of St. Louis, before entering upon the duties of his
5 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
6 the largest total collections made during any one month of
7 the year preceding his election or appointment, plus ten per
8 cent of said amount; provided, however, that no collector
9 shall be required to give bond in excess of the sum of seven
10 hundred and fifty thousand dollars, conditioned that he will
11 faithfully and punctually collect and pay over all state, county
12 and other revenue for the four years next ensuing the first
13 day of March, thereafter, and that he will in all things faithfully perform all the duties of the office of collector according
14 to law. The official bond required by this section shall be
15 signed by at least five solvent sureties; provided, that in all
16 second, third and fourth class counties the county court in such
17 counties may require the county collector thereof to deposit
18 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,
19 RSMo 1949, to the credit of a fund to be known as 'County

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24 Collector's Fund,' and such depository or depositories shall be
25 bound to account for the moneys in such county collector's
26 fund in the same manner as the public funds of every kind and
27 description going into the hands of the county treasurer and
28 under the same depository bond as required to be given
29 under section 110.160, RSMo 1949; provided further, that when
30 such deposits are so required to be made, such county courts
31 may also require that the bond of the county collector in such
32 counties shall be in the sum equal to one-fourth of the largest
33 amount collected during any one month of the year imme-
34 diately preceding his election or appointment, plus ten per cent
35 of said amount; provided further, that no such county collector
36 shall be required to make daily deposits for such days when
37 his collections do not total at least the sum of one hundred
38 dollars; and provided further, the collector shall not check
39 on such county collector's fund except for the purpose of
40 making the monthly distribution of taxes and licenses col-
41 lected for distribution as provided by law or for balancing
42 accounts among different depositories."

You are obviously correct in stating that House Bill No. 193 specifically includes, and applies to, second class counties, of which the County of Buchanan is one.

The directorate of House Bill No. 193, in regard to the bond of county collectors in all Missouri counties, is clear enough. That directorate is that the bond shall be 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 * * *."

House Bill No. 193 then proceeds to state that under certain circumstances the above mentioned directorate in regard to the amount of the bond of county collectors shall not be followed in second, third, and fourth class counties. These circumstances are that in second, third, and fourth class counties the county court may require the collector to make a daily deposit of all moneys collected by him (unless such amount does not total the sum of one hundred dollars), and that, if the county court does make this daily deposit requirement, it then may require that the bond of the collector be in a sum of one-fourth of the largest amount collected during any one month of the preceding year, plus ten per cent of such amount.

In other words, the county court, in second, third and fourth class counties, may, under House Bill No. 193, do any one of three things in regard to the collector.

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First, they may require him to make a bond in a sum equal to the largest collections made in any one month of the preceding year, plus ten per cent of such sum, up to the sum of seven hundred fifty thousand dollars.

Second, the county court may make all of the requirements detailed in "First" above, and in addition require the collector to make daily deposits of all moneys received by him on days when such collections total as much as one hundred dollars.

Third, the county court may require the collector to make the daily deposits referred to in "Second" above, subject to the condition mentioned, and may permit him to make bond in a sum equal to only one-fourth of the largest amount collected during any one month of the preceding year, plus ten per cent of such an amount, up to but not to exceed the sum of seven hundred fifty thousand dollars.

We now direct your attention to Sections 52.360, 52.370, and 52.380, RSMo 1949, Chapter 52, which is entitled "County Collectors," which aforesaid sections are under the subhead, "Provisions Applicable to Class Two Counties." These sections read as follows:

"52.360. Daily deposits and reports--interest (class two counties). - It shall be the duty of the county collector, in all counties of the second class, to deposit each day in the depository or depositories selected by the county for the deposit of county funds, all money received by him as county collector during the day previous, and to make a daily report thereof to the county auditor, as provided in section 55.190, RSMo 1949 or if there be no county auditor, then the county collector shall make such reports to the clerk of the county court, in the same manner. The interest on all such money deposited by the county collector shall be computed upon the daily balances of said deposits, and all such interest shall be paid and turned over to the county treasurer at the same time and in the same manner that the monthly settlement and payment are made by the collector, and such interest shall go to and become a part of the general revenue fund of the county. (13909, A.L. 1945 p. 1405)"

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"52.370. Disbursement by check (class two counties). - All money disbursed by the county collector by virtue of his office shall be paid by check signed by the collector and countersigned by the auditor of the county. (13910)"

"52.380. Bond (class two counties). - From and after the taking effect of this section the bond of the county collector in all counties herein included shall be not less than fifty thousand dollars nor exceeding seven hundred and fifty thousand dollars, the amount of said bond to be fixed by the county court, the cost of said bond shall be paid out of the general revenue fund of the county and shall otherwise be executed and subject to the provisions of this chapter. (13911)"

We will here call attention to the fact that Section 52.360, quoted above, was enacted by the 63rd General Assembly and became effective July 1, 1946; that Sections 52.370 and 52.380, quoted above, were both enacted in 1921.

A reading of the above sections reveals that at numerous points they are in direct conflict with House Bill No. 193. For example, Section 52.360 requires the collector in second class counties to make daily deposits of all moneys collected by him during the previous day, whereas House Bill No. 193 does not make such a requirement, but puts in the hands of the county court the power to make such a requirement if they see fit to do so. Furthermore, Section 52.360 requires that the collector, in second class counties, deposit daily all moneys collected by him the previous day regardless of amount, whereas House Bill No. 193, as we said above, leaves in the hands of the county court the power to require the collector to make daily deposits, but also takes from the county court the power to require daily deposits on those days when the total amount collected does not equal one hundred dollars.

Furthermore, Section 52.380, quoted above, fixes, for second class counties, a minimum bond of fifty thousand dollars and a maximum bond of seven hundred fifty thousand dollars, whereas House Bill No. 193, which includes in its provisions second class counties, fixes the same maximum but does not set any minimum figure.

From the above, it must be clear that there is an irreconcilable conflict between House Bill No. 193, insofar

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as it relates to second class counties, and Sections 52.360 through 52.380, RSMo 1949, which pertain exclusively to second class counties.

It is our belief, as stated above, that there exist irreconcilable conflicts between House Bill No. 193 and Sections 52.360 through 52.380. House Bill No. 193 was enacted subsequently to Sections 52.360 through 52.380. Sections 52.360 through 52.380 constitute a "special law" dealing only with counties of the second class; House Bill No. 193, insofar as it purports to regulate the amount of the county collector's bond in counties of the second, third and fourth class is also a "special law" as distinguished from a "general law." In the case of Reals v. Courson, 164 S.W. 2d 306, the court stated, in part:

"A statute which relates to persons or things as a class, is a general law, while a statute which relates to particular persons or things of a class is a special law."

The above definition was quoted with approval in Laclede Power & Light Company v. City of St. Louis, 182 S.W. 2d 70, l.c. 72. We believe that Sections 52.360 through 52.380 constitute a "special law," since they apply only to collectors in a particular class of counties, to-wit, counties of the second class, and that insofar as House Bill No. 193 purports to relate to counties of the second, third, and fourth classes, it, too, constitutes a "special law."

We will now consider the matter of whether, and to what extent, a later statute repeals a prior statute when the two are in conflict.

At this point we desire to call attention to the fact that House Bill No. 193 does not specifically repeal Section 52.020, RSMo 1949, but that if it repeals Sections 52.360 through 52.380, it does so only by implication.

The law is well settled that a later act will repeal a prior act if the two are so inconsistent that both cannot stand.

In the case of Templeton v. Insurance Co. of North America, 201 S.W. 2d 784, at l.c. 789, the court said:

"There could be no contention that Section 5940 expressly repealed Section 5933. All that Section 5940 expressly repealed was

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Section 7030, R.S. Mo. 1909, in lieu of which it was enacted; and if it nevertheless had the effect of repealing Section 5933, it only did so by implication. However, repeals by implication are not favored, (State ex rel. St. Louis Police Relief Ass'n. v. Igoe, 340 Mo. 1166, 107 S.W. 2d 929); and in the absence of express terms, a later statute will not be held to have repealed a former one unless there is such a manifest and total repugnance between their respective provisions that the two could not possibly stand together. State ex rel. and to use of Geo. B. Peck Co. v. Brown, 340 Mo. 1189, 105 S.W. 2d 909; Graves v. Little Tarkio Drainage Dist. No. 1, 345 Mo. 557, 134 S.W. 2d 70."

In the case of Vining v. Probst, 239 Mo. App. 157, 186 S.W. 2d 611, the court said in part as follows, at l.c. 164:

"* * * If there be any conflict between two statutes dealing with the same common subject matter, the statute which deals with it in a minute and particular way will prevail over one of a more general nature; and the statute which takes effect at the later date will also usually prevail. Measured by both of these last mentioned rules, the provisions of the 'Small Loan Laws' prevail over those of the interest laws. If the later law did repeal the earlier, in part, by implication, it did so only insofar as the two may be in conflict; but, in any event, it is apparent that there are cases such as that now under consideration where the provisions of both statutes cannot be applied effectively. (State v. Taylor, 18 S.W. (2d) 474, l.c. 477, 323 Mo. 15.)"

In the case of State v. Taylor, 18 S.W. 2d 474, the court stated l.c. 476, in part, as follows:

"* * * The two acts should be construed so that each may stand and be given effect, if possible. The later statute should be construed to repeal the former only in so far as the two acts may be found to be in con-

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flict. *Wrightsman v. Gideon*, 296 Mo. 214, loc. cit. 223, 247 S.W. 135, and cases cited."

We believe it to be obvious that it was the intention of the Legislature to provide in House Bill No. 193 the complete law regarding county collectors' bonds in counties of the second class, because line 18 of such bill, as originally introduced, referred only to third and fourth class counties but was amended so as to apply specifically to second class counties by Senate Amendment No. 1, which was introduced by Senator Smith of Greene County. (Journal of the Senate, 66th General Assembly, page 296.)

CONCLUSION

The county court in second class counties may require a county collector to make bond in a sum equal to the largest collections made in any one month of the preceding year, plus ten per cent of such sum, up to but not to exceed the sum of seven hundred fifty thousand dollars.

If the county court in second class counties requires the county collector to make daily deposits of all moneys received by him on those days when such collections total as much as one hundred dollars, they may then permit him to make bond in a sum equal to only one-fourth of the largest amount collected during any one month of the preceding year, plus ten per cent of such amount, up to but not to exceed the sum of seven hundred fifty thousand dollars.

Respectfully submitted,

APPROVED:



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