

TOWNSHIP COLLECTOR: A township collector shall receive a commission
COMMISSIONS: of $2\frac{1}{2}\%$ on the first \$40,000 collected during
the year or annual term of his office prior to
his final settlement in March of each year, and
1% on the next \$40,000 collected, and $\frac{3}{4}$ of
1% on the remainder and that the period of time
during which said
collections are made is
not affected by the fact
that the collections may
have been made in two
different calendar years.

January 18, 1951

Honorable Joe C. Welborn
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri



1-19-51

Dear Mr. Welborn:

You have requested an official opinion by this department upon the following proposition as set forth in your letter:

"The collector of this County has asked me to write you for an official opinion on the meaning of a certain sentence in section 14014 R.S. Mo., 1939. Stoddard County is a county operating under township organization. The portion of the section referred to is as follows:

"He (township collector) shall receive a commission of two and one-half per cent on the first forty thousand dollars collected; one per cent on the next forty thousand dollars collected; and three-fourths per cent on the remainder of all moneys collected by him."

"The question is: what period of time is covered by the above provision. Some of the township collectors contend that they may get the tax books in November, retain $2\frac{1}{2}\%$ per cent of the first \$40,000.00 collected for the remainder of the year, and then after the start of the new year, retain $2\frac{1}{2}\%$ per cent of the first \$40,000.00 collected."

Section 139.430, R.S. Mo. 1949, subsection 4 provides as follows:

"4. The township collector shall receive a commission of two and one-half per cent

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on the first forty thousand dollars collected; one per cent on the next forty thousand dollars collected; and three-fourths of one per cent on the remainder of all moneys collected by him." (Sec. 14014, R.S. 1939, A.1949, S.B. 1024)

Section 139.420, R.S. Mo. 1949, (Sec. 14,000 R.S. Mo. 1939, A. 1949, S.B. 1024) reads as follows:

"The township collector of each township at the term of the county court to be held on the first Monday in March of each year, shall make a final settlement of his accounts with the county court for state, county, school and township taxes; produce receipts from the proper officers for all school and township taxes collected by him, less his commission; pay over to the county treasurer and ex officio collector all moneys remaining in his hands, collected by him on state and county taxes; make his return of all delinquent or unpaid taxes, as required by law, and make oath before the court that he has exhausted all the remedies required by law for the collection of such taxes.

"2. On or before the twentieth day of March in each year, he shall make a final settlement with the township board.

"3. If any township collector shall fail or refuse to make the settlement required by this section, or shall fail or refuse to pay over the state and county taxes, as provided in this section, the county court shall attach him until he shall make such settlement of his accounts or pay over the money found due from him; and the court shall cause the clerk thereof to notify the director of revenue and the prosecuting attorney of the county at once of the failure of such township collector to settle his accounts, or pay over the money found due from him, and the director of revenue and the prosecuting attorney shall proceed against such collector in the manner provided in section 139.440, and such collector shall be liable to the penalties provided in section 139.440. (Sec. 14000, A. 1949, S.B. 1024)".

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The township collector takes office within ten days after he has been notified of his election. He is elected the last Tuesday in March, biennially. I assume that your township collector was elected the last Tuesday in March, 1949, (See Secs. 65.060; 65.110 and 65.160, R. S. Mo. 1949). Since the township collector's term of office commences on or about April 1st after he is elected the last Tuesday in March, then the year of his office would not be the calendar year but would be the year of his term of office or 365 days from the time that he took office.

The fact that he is to make his yearly settlements the first Monday in March of each year to the county court which will be a final settlement of his accounts and the fact that he must make his final settlement with the township board on or before the 20th day of March in each year convinces us that his commission is based upon the collections made during the prior year of his office and not the collections made in each calendar year. If he would fail to make his yearly final settlements, then as the statute Section 139.430 is worded he would only be entitled to the commission set forth in said Subsection 4, the entire period covered by his settlement, that is, for the two year term of his office.

The Supreme Court of Missouri in the case of State v. Linville, 300 S.W. 1066, l.c. 1067, said:

"4. Section 10938, R.S. 1909, provides for ascertaining the 'annual' salary. Section 11352, R. S. 1919, says that the superintendent shall receive so much money, dependent upon the population of the county, without saying whether it was per annum. From the context it must be presumed that annual salary was meant. 'Annual salary,' as used in said section 10938, means salary for each year of the incumbency. It cannot be split up into periods by elections which occur during the year, and must be calculated on a year as a whole. We conclude further that 'annual,' as applied to salaries, means not the calendar years, but the years of the incumbent's term, which in the case of relator begins on the 1st day of April each year."

This case and the quotation cited above was quoted with approval by the Supreme Court of Missouri in the case of Simms v. Clinton

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County, 8 S.W. 2d 69, 1.c. 70.

Townships are political subdivisions of the state and a compensation of the township collector is subject to terms prescribed by the Legislature. (See Barton County vs. Walser, 47 Mo. 189, 52 Am. Jur. page 482.)

CONCLUSION

It is the opinion of this department that a township collector shall receive a commission of $2\frac{1}{2}\%$ on the first \$40,000 collected during the year or annual term of his office prior to his final settlement in March of each year, and 1% on the next \$40,000 collected and $\frac{3}{4}$ of 1% on the remainder and that the period of time during which said collections are made is not affected by the fact that the collections may have been made in two different calendar years.

Respectfully submitted,

STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

SJM:mw