

TAXATION: THIRD CLASS COUNTIES:
TOWNSHIP ORGANIZATION: TOWNSHIP
COLLECTOR'S FEES:

Township collector of 3rd class township organization county to receive fees provided by Sec. 139.430(4), RSMo 1949, for collection of all general taxes in township. Not entitled to receive fee in addition to that prescribed by Sec. 139.430(4), for collection of personal taxes by distraint and sale under Sec. 139.360, RSMo 1949, since additional fee is not provided for by any Missouri statutes.



February 19, 1952

2-20-52

Honorable Weldon W. Moore
Prosecuting Attorney of
Texas County
Houston, Missouri

Dear Sir:

Your recent request for a legal opinion of this department has been received and reads as follows:

"I have been requested by Township Collectors of Texas County, Missouri, to ask your opinion as to whether or not a Township Collector in a 3rd class county is entitled to additional fees for collection of personal property taxes under Section 139.360, Missouri Revised Statutes 1949."

No attempt is made in the opinion request to explain what is meant by the term "additional fees," but we assume that it refers to fees for collecting personal taxes in addition to those allowed by law to a township collector for the collection of taxes generally, in his township.

While the inquiry relates to the additional fees of a township collector in a third class township organization county, Sections 139.320 to 139.460, inclusive, of Chapter 139, RSMo 1949, provide for the payment and collection of current taxes in township organization counties generally. No statutory provisions limit the application of said sections to any particular class of counties, therefore they are as fully applicable to third class, as to any other class of township organization counties.

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Section 139.360, prescribes the procedure to be followed by the collector when the personal property owner fails to pay taxes levied against his property, and reads as follows:

"In case any person shall refuse or neglect to pay the tax imposed, the collector shall levy the same by distraint and sale of the goods and chattels of the person who ought to pay the same."

Section 139.430(4) provides the commission a township collector shall receive for the collection of taxes and reads as follows:

"(4) The 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 of one per cent on the remainder of all moneys collected by him."

It is noted that Section 139.360, RSMq 1949, does not provide a fee for the performance of the duties mentioned in that section, and it is also noted that no other section of the statutes provide any fee for the performance of such duties, or that the collector shall receive any other fees for collecting general taxes than those provided by Section 139.430(4), supra.

The general rule as to the right of an officer to receive compensation in the absence of specific statutory authority, has been given in the well known case of Nodaway County v. Kidder, 344 Mo. 795, in which the Supreme Court denied the appellant county judge the right to recover additional fees and mileage from his county, than those provided by law. At l. c. 801, the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to

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any different mode of securing same. Such statutes, too must be strictly construed as against the officer. (State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S.W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 492, 279 S.W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656.)

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. (State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645.)

"The duties performed by appellant, and for which the additional fee or salary and mileage, was paid, were with reference to matters pertaining to and relating to his official duties as presiding judge of the county court and said services were within the scope of said official duties. The work in which appellant was engaged was directly under the supervision of the county court. Public policy requires that a public officer be denied additional compensation for performing official duties."

Therefore in the absence of any statute authorizing such additional fee, the township collector is not entitled to receive any other compensation for his services in the collection of all general taxes than that provided by Section 139.430(4), supra, and is not entitled to a fee for the performance of his duties under the provisions of Section 139.360, supra.

CONCLUSION

It is therefore the opinion of this department that a township collector of a third class county operating under township organization, is entitled to receive a commission for the collection of all general taxes in his township at the rates specified by Section 139.430(4), RSMo 1949, and that for the collection of taxes by means of distraint and sale of personal property when the owner has failed to pay the taxes levied against such property, said

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collector is not entitled to receive any fee for his services in addition to that provided by Section 139.430(4), supra, since no Missouri statutes provide that the township collector shall be entitled to receive the additional fee for his services under such circumstances.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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