

COUNTY TREASURERS: County treasurer would not receive
compensation provided for services
OFFICERS: in connection with intangible tax
if intangible tax is repealed.

JOHN M. DALTON
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April 16, 1953

John C. Johnsen
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Honorable James T. Riley
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"In the 66th General Assembly the Legislature enacted H.B. 199, see Laws of Missouri, 1951, page 867, which by the imposition of additional duties upon the county treasurer, also, provided additional pay, Section 3, Laws of Missouri, 1951, page 868.

"For the past two years the treasurers of the various counties of the State of Missouri have operated under said law and received such additional compensation as was provided for therein.

"In the 67th General Assembly, S.B. 356 was introduced which has for its purpose the repeal of sections 146.010 to 146.130, RSMo 1949, and sections 146.055 and 146.056, RSMo 1951 Supplement. S.B. 356 does not mention the enactment mentioned in the first paragraph of this letter and now specifically Section 54.275 Cum. Supp. 1951, Chapter 54.

"S.B. 356 does not mention the sections of the intangible tax law relating to Banks, Laws of Missouri, 1945, page 1921; Credit Institutions, Laws of Missouri, 1945, page 1937; nor, Building & Loan, Laws of Missouri, 1945, page 1919.

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"The question now confronting the county treasurers is: Would the enactment of S.B. 356, which specifically denotes certain sections of the Missouri Laws, but does not mention other sections of the Missouri Laws, all of which relate to the intangible tax law, either by implication or the removal of the additional duties under Section 146.056, Cum. Supp. 1951, cause the loss of the additional compensation as provided under Section 54.275, Cum. Supp. 1951?

"The writer is aware that final passage of the bill has not been accomplished, but due to the fact that one hundred and fourteen (114) county treasurers may be effected by this bill an early opinion from your office would be most deeply appreciated."

Section 146.055, Mo. R.S., 1951 Supp., provides:

"It shall be the duty of the state director of revenue to furnish, on or before the first day of January in each year, to the county treasurers of each county under charter form of government and to the county treasurers of class two, three and four counties in this state, forms for the use of the citizens of this state to make property tax returns on intangibles as provided by section 146.050, RSMo 1949, in sufficient number to meet the needs of the respective counties. At the same time the director shall furnish to each treasurer a list of the intangible taxpayers of the respective counties who filed a state intangible tax return the preceding year."

Section 146.056, Mo. R.S., 1951 Supp., provides:

"1. On or before the fifteenth day of January of each year every county treasurer shall mail to each intangible taxpayer as listed by the director of revenue, and to such other persons as he may have reason to believe may be possessed of taxable, intangible property a form prescribed and furnished by the director of revenue, together

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with a brief statement of what is required of the taxpayer under sections 146.055 and 146.056. Every county treasurer shall mail, on or before the first day of February of each year, to the director of revenue, a list of the additional names to whom he has mailed said form, which said list of additional names shall be added to the list held by the director of revenue as those who have intangible personal property subject to taxation.

"2. The county treasurer shall keep all such lists strictly confidential and shall not reveal the contents thereof to any person except as herein provided."

Section 54.275, Mo. R.S., 1951 Supp., provides:

"For the additional duties imposed upon county treasurers by section 146.056, RSMo 1949, they shall receive the following additional compensation, to be paid in the same manner and from the same funds as county treasurers are now paid provided said treasurers shall have used diligence in securing and preparing the additional list and shall have forwarded the same to the director of revenue.

(1) In class four counties six hundred dollars per annum.

(2) In class three counties having a population of less than twelve thousand five hundred, six hundred dollars per annum.

(3) In class three counties having a population of more than twelve thousand five hundred but less than thirty thousand, eight hundred dollars.

(4) In class three counties having a population of more than thirty thousand, one thousand dollars.

(5) In class two counties, one thousand dollars.

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(6) In counties under charter form of government a compensation to be fixed by the county council."

Senate Bill No. 356 of the 67th General Assembly provides:

"Section 1. That sections 146.010 to 146.130, RSMo 1949 and sections 146.055 and 146.056, RSMo 1951 Supp., be and the same are hereby repealed."

Sections 146.010 to 146.130, RSMo 1949, referred to in Senate Bill No. 356, is the entire statutory scheme for the imposition and collection of the tax on intangible personal property. Should Senate Bill No. 356 become law, there would be no statutory provisions relative to the imposition of taxes on such property. The duties imposed upon the county treasurer under Section 146.056 would no longer be required.

It is quite obvious that the imposition of the duties upon the treasurer and the compensation provided therefor was for the purpose of permitting an increase in the compensation of treasurers during their term without running afoul of the provisions of Section 13 of Article VII of the Constitution of Missouri, 1945, which provides:

"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."

This method of effecting an increase in compensation during the term of an officer has received the approval of our courts. State ex rel. Harvey v. Sheehan, 269 Mo. 421, 429, 190 S.W. 894; Little River Drainage Dist. v. Lassater, 325 Mo. 493, 29 S. W. (2d) 716.

Inasmuch as the additional duties in a situation such as this are, by virtue of the constitutional provision above referred to, inseparably related to the increased compensation, we think it beyond doubt that the removal of the duties would necessarily eliminate the additional compensation provided for such duties. "A public officer has no rights of any sort to compensation for his services before he has earned it, even if prevented from performing such services by legislative action." 67 C. J. S., Officers, Section 83, page 320.

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Inasmuch as the services required have already been performed for the calendar year 1953, enactment of Senate Bill No. 356 would not affect compensation for 1953.

In your opinion request you refer to the fact that Senate Bill No. 356 makes no reference to the Bank Tax Act (Sections 148.010-148.110, RSMo 1949), the Credit Institutions Tax (Sections 148.120-148.230, RSMo 1949), and the Savings and Loan Association Tax (Sections 148.470-148.530, RSMo 1949). However, Section 146.056, above quoted, imposes no duties upon the county treasurer regarding such taxes. He is required to send return forms to such persons as are required to pay the tax on intangible personal property under Section 146.050, RSMo 1949, one of the provisions which Senate Bill No. 356 repeals.

CONCLUSION

Therefore, it is the opinion of this department that should Senate Bill No. 356 of the 67th General Assembly, as it now reads, be enacted into law, effecting the repeal of the statutes imposing tax upon intangible personal property, county treasurers would no longer be entitled to the additional compensation provided by Section 54.275, Mo. R.S., 1951 Supp., for services formerly rendered by them in connection with said tax on intangible personal property.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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