

COUNTY COLLECTORS' FEES: (
TAXATION:)
RAILROAD TAXATION: (

Taxes on bridge, express and public utility companies are to be included under the provision of Section 52.260 RSMo 1949, for the purpose of determining collectors' commissions. Railroad taxes are not to be included. Collectors' may not retain commission for collection of railroad taxes if the maximum compensation allowed them under Section 52.270 RSMo 1949 is exceeded by their addition.

FILED
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January 14, 1954

Hon. Ray J. Campbell
Collector of Revenue
Pemiscot County
Caruthersville, Missouri

Dear Mr. Campbell:

You have made the following opinion request of this office:

"Since the totals of railroad and utility taxes are not included in arriving at the percentage rate of commissions which the collector is allowed to retain under the provisions of Sections 52.260 and 52.270, RSMo. 1949, and the fee for collecting said taxes is prescribed by a separate section, 151.280, RSMo 1949, should not the county collector be allowed to retain the 1% therein allowed in addition to the total amount prescribed by Sections 52.260 and 52.270."

The first premise of this question is posed by the use of the word "if" in the question asked. This matter has been given serious consideration by this office.

The question as to whether railroad taxes are to be taken into consideration under the provisions of Section 52.260 RSMo 1949 has again been reconsidered and reviewed by this office. Our opinion is in agreement with the conclusion reached in the two opinions which we have previously adopted by letter to Honorable Haskell Holman, May 13, 1953, in regard this subject.

The first of those opinions was the opinion of J. E. Taylor, then Assistant Attorney General, to Lewis A. Duval, dated August 21, 1935. The conclusion of that opinion was as follows:

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"It is the opinion of this department that corporation franchise tax and the railroad tax assessed under the provisions of Article XIII, Chapter 59, R. S. Mo. 1929, should not be included in the amount of taxes assessed and levied for the purpose of determining the collector's commission under the provisions of Section 9935, Laws of Mo, 1933, page 454."

The reason for the conclusion in the Duval opinion was that since collector's commission is fixed by law as now found in Section 151.280, it was evident that the Legislature did not intend that the amount of taxes assessed and levied against a railroad should be included in the amount of taxes assessed and levied for the purpose of determining the collector's commission.

The second opinion of the two opinions referred to in the letter mentioned above was an opinion to A. A. Willard, Collector of Revenue, of Dallas County, dated June 7, 1937. The conclusion of that opinion was that under Section 9935, Laws of Missouri 1933, page 454, only taxes that are to be collected by the collector are to be included in the classification which determines the percent the collector is to receive. It was further concluded that the county collector was required to collect special road district taxes and those taxes were to be included in the classification to determine the collector's percent. This opinion made no reference to railroad taxes as such. It did, however, refer to and include a copy of the above opinion to Lewis A. Duval, August 21, 1935.

A subsequent opinion was given by J. E. Taylor to R. W. Starling, May 14, 1936, in which the conclusion in regard to "locally assessed utilities" is as follows:

"It is, therefore, the opinion of this Department that the taxes locally assessed against electric power and light companies are to be included in the total amount of taxes locally assessed and levied for the purpose of determining the commission which the county collector receives for collecting said revenue."

After quoting from State v. Gehner, 286 S. W. 117, 1.c. 119, in regard to the "distributable property" and "nondistributable property" it is said on page 6 of that opinion:

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"In view of the above, and the practice followed in this State by the State Tax Commission for many years, there can be no doubt that the distributable property owned by telegraph, telephone, electric power and light companies, electric transmission lines, are to be assessed by the State Tax Commission and that the remainder or nondistributable property is locally assessed. It was so held in the case of State v. Baker, 293 S.W. 399.

"This Department, in an opinion given to Lewis A. Duval, Prosecuting Attorney Macon County, Missouri, under date of August 21, 1935, held that the amount of taxes assessed and levied against a railroad should not be included in the amount of taxes assessed and levied for the purpose of determining the collector's commission under Section 9935, supra. The reason for so holding, however, was that Section 10044, Revised Statutes Missouri 1929, provides a special commission for the collector in collecting the railroad taxes. While taxes on property of telegraph, telephone and electric power and light companies are assessed and collected in the same manner as taxes on railroad property, there is no special statute allowing the county collector a special commission for the collection of these taxes."

We believe that this opinion gave service to the long established method of computation of the compensation of county collectors and since the Railroad statute, Section 151.280 was first enacted in its present form in 1879⁽¹⁾ and the method of the computation of the collector's maximum commission in 1877⁽²⁾ there is additional reason given in the adoption of the reasoning of those two opinions. The basic principle seeming to be that the amount of the railroad commissions are fixed and established at one percent (1%) and the percentages in the collector's compensation law vary from ten percent (10%) in Subdivision 1 of Section 52.260 to one-half of one percent is the maximum classification under Subdivision 14.

It should be here considered that the courts would be reluctant to overturn a long established principle of the auditors of this State requiring the accountability of commissions on railroad taxes, under the rule in State ex rel. Barrett v. First National Bank of St. Louis, Missouri, 249 S. W. 619, 297 Mo. 397, 1. e. 410 as follows:

(1) Laws 1879, Page 95.

(2) Laws 1877, Page 253-254

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"In addition, it is a well established rule of construction that a long-continued interpretation of a statute by public officers charged with the execution, while not controlling upon the courts, is entitled to special consideration. * * * * *

It can only be concluded from the foregoing that the compensation of collectors for their services in collecting the revenue is provided for by Sections 52,260 and 52.270 RSMo 1949. Section 52,270 establishes the maximum amounts the Legislature intended for them to be paid.

The utility taxes are also included in the question raised by your opinion request. The inclusion of those taxes should be considered here. In the above mentioned opinion to R. W. Starling, it was said that taxes locally assessed against an electric power and light company were to be included in the matter of taxes locally assessed for the purpose of determining the collectors' commissions. This followed the reasoning of the Duvall opinion that there was a separate section of the law providing for the amount of the collectors' commission for collecting the railroad taxes. The words "utility taxes" are used to designate bridge, express and public utility company taxes as provided now in Chapter 153 RSMo 1949. Those words are so used for the purpose of this opinion. The Duvall opinion in regard to electric power and light companies (utilities), states that there is no special statute allowing the county collector a special commission for the collection of those taxes.

That opinion concludes that locally assessed taxes on the electric power and light companies are to be included in the total amount of taxes locally assessed and levied for the purpose of determining the commissions which the county collector receives for collecting therevenue. If the so-called locally assessed utility taxes are so construed then in what characteristic will the utility taxes assessed by the State Tax Commission fall? If utility company taxes not locally assessed are not to be included with railroad taxes is there a commission otherwise provided for, for their collection? We do not believe that they can be classified as railroad taxes, and the commission for collection paid under Section 151.280, RSMo 1949, as Subsection 2 of Section 153.030 RSMo 1949, provides in regard to the method of collection as follows:

"2. And taxes levied thereon shall be levied and collected in the manner as is now or may

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hereafter be provided by law for the taxation of railroad property in this state, and county courts, county boards of equalization and the state tax commission have or may hereafter be empowered with, in assessing, equalizing and adjusting the taxes on railroad property
* * * * *

That is the method of collection. The above section cannot be said to include the collectors' commission for collecting utility taxes in our opinion.

Local taxes and taxes locally assessed have been discussed in many court opinions on this subject of taxation. The use of the word local undoubtedly arises from the inclusion of Subsection 1 into each succeeding subsection of Section 52,260, supra, and particularly the words "local taxes" in the following quote:

"(1) In each county in this state wherein the whole state, county, bridge, road school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year amount to five thousand dollars or less, a commission of ten per cent on the amount collected;"

(Underscoring ours)

It is believed that it would be giving the word "local" a double meaning to interpret it as applying to and modifying the following phrase: "assessed and levied for any one year." The true meaning should be, we feel, either taxes in the county or taxes of the county. The word local merely is restricting the meaning definitely to county taxes. This would exclude, Franchise Tax, Sales Tax, Income Tax and other State tax, but would apply to a tax computed on a State levy and allocated to the various counties. To say that the word local modifies the word taxes in the first phrase and the words "assessed and levied" the second phrase removed in the above paragraph is a somewhat forced interpretation.

If the utility tax is not merged with the railroad tax then it must be accounted for. It must be accounted for in some wise to provide for a fee for its collection. It is surely conceded that the Legislature intended for the collector to be paid something for collecting the utility taxes. The conclusion must therefore be reached that the collectors' should include the utility taxes in the calculation of the collectors' commissions under Section 52.260 RSMo 1949 to arrive at the percentage rate of collection.

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Since the opinion of this office must then be that Railroad taxes are not to be included in arriving at the percentage rate which the collector is allowed to retain, and that "utility" taxes are included then the question remains as to whether or not the collector is allowed to retain the one percent (1%) allowed by Section 141.280 RSMo 1949, in addition to the total or maximum provided by Section 52.270.

It is a well established principle in this State that the payment of a public officer for services must be definitely provided for by law. In the matter of Nodaway County v. Kidder, 129 S.W. (2d) 857, 1.c., 860, this rule was affirmatively reiterated as follows:

"(8) 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 statutes in regard to the compensation of county collectors are Sections 52.260 and 52.270 RSMo 1949. We here quote from Section 52.260 in pertinent portions as follows:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:

"(1) In each county in this state wherein the whole state, county, bridge, road, school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year amount to five thousand dollars or less, a commission of ten per cent on the amount collected;"

and it is further set out in Subdivision 14 as follows:

" * * * * All fees, commissions or other compensations heretofore charged, received or allowed by or to any such collector, as compensation for his services, whether

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under or by virtue of state law or not, are hereby abolished; and such collector and all his deputies and employees are hereby forbidden under penalty of forfeiture of office, to collect, charge or receive, directly or indirectly, any fees or commissions in the nature of compensation, or other compensation other than those allowed and authorized by this section (11106)."

It will be noted that this last quotation is contained in the subdivision relating to counties in which "all such taxes and licenses levied for any one year exceed Two-Million Dollars." However, the last words of the quotation are "authorized by this section" which words would seem to imply a limitation to the section and add an additional impetus to the phrase in the opening statement "the following commissions and no more."

Section 151.280, RSMo 1949, the Railroad Commission section previously mentioned as contained in the Laws of 1879 is as follows:

"151.280. Fees allowed county collector.--
The county collector shall be allowed for collecting the railroad taxes, payable out of the same, one percent on all sums paid without seizure of personal property; * * *."

The above laws have been interpreted since their enactment by the courts of this State. A thorough search has failed to find, however, any court decision in regard to the question as to whether commissions on railroad taxes are to be allowed to a collector in addition to the amount allowed to him under the provisions of Sections 52.260 and 52.270 mentioned supra.

In the matter of State ex rel. Hawkins 169 Mo. 615 the Supreme Court considered the initial phrase which allowed the collector as full compensation for his services, certain commissions. This was in regard to the question as to whether or not the collectors would be allowed to retain additional commission upon "back taxes". In the last paragraphs at l. c. 621 the court said as follows:

"We think the circuit court correctly ruled that the commissions allowed by section 9260, Revised Statutes 1899, should be full compensation for collecting all taxes, except back taxes, and as to the latter they should receive the extra fees which their extra labors and duties imposed upon them.

"The judgment is affirmed. All concur."

It is believed that the words used in Section 52.260 RSMo 1949 are

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definite and certain. That the last quotation of Subdivision 14 of Section 52.260, supra, "other than those allowed and authorized by this section" applies to Section 52.260 in its entirety.

It is also to be considered that if the Legislature had intended for the collectors of revenue to retain commissions on railroad taxes in addition to the maximum allowed by Section 52.270, it would have provided as was done in Section 52.250 RSMo 1949 as follows:

" * * * * Said compensation shall be exclusive of and unaccountable in the maximum commissions now provided in sections 52.260 to 52.280."

CONCLUSION

It is therefore the opinion of this office that public utility company taxes are to be included in the total amount of taxes assessed and levied for the purpose of determining the commission which the county collector receives for collecting the revenue under the provisions of Section 52.260 RSMo 1949.

It is further the opinion of this office that railroad taxes are not included in the amount of taxes assessed and levied for the purpose of determining the collectors' commissions under Section 52.260, supra.

It is further the opinion of this office that county collectors may not retain commissions collected under the provisions of Section 52.280, RSMo 1949, in addition to the maximum amounts allowed them for their compensation by Section 52.270, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James W. Faris.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

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