

COUNTY COLLECTORS
(class two counties):
COMPENSATION:

Collectors of revenue in counties of the second class to be compensated under the provisions of Sec. 52.420, MoRS, Cum. Supp., 1953, and may not retain fees for collection of drainage or levee district taxes.



May 5, 1955

Honorable Wm. Harrison Norton
Member, House of Representatives
Room 413, Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The existing law of Missouri requires the County Collector to be the collector for levee and drainage districts and provides for the payment of a certain percentage to him for his services. It also requires that he furnish a bond at his own expenses.

"The existing law regarding the salary of a collector in second class counties such as Clay County sets the salary by statute and states that it is in lieu of all the fees.

"I would like to request an official opinion as to whether the Collector of Clay County can collect the statutory commission due him from levee and drainage districts.

"For your information I have discussed this matter with your Mr. Berry. I personally feel that he is entitled to retain this additional income after reviewing the statutes. I would appreciate it if you would give me your opinion at your earliest convenience."

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The compensation of collectors of revenue in counties of the second class, together with the limitation applicable thereto, is provided under Section 52.420, MoRS, Cum. Supp., 1953, reading as follows:

"1. The county collector in all counties of the second class, shall receive as compensation for his services, an annual salary of five thousand dollars, to be paid by the county in twelve equal installments out of the county treasury.

"2. For the additional duties imposed by sections 52.361, 52.362, and 52.363, said collector shall receive as compensation for his services an annual salary of one thousand dollars payable in the same manner as provided in subsection 1 of this section.

"3. Such salary shall be in lieu of all fees, commission, penalties, charges and other compensation now charged, received or allowed by virtue of any statute, to any such collector as compensation for his services."

The "additional duties" referred to in paragraph 2, supra, are not related to the matter under discussion and, therefore, no further consideration will be given thereto.

Section 242.550, RSMo 1949, forming a part of Chapter 242 relating to drainage districts, provides in part as follows:

"* * * * * The said collector shall retain for his services one per cent of the amount he collects on current taxes and two per cent of the amount he collects on delinquent taxes."

The question which you have presented arises from the conflict in the statutes quoted.

It is, of course, fundamental that in the construction of statutes the prime requisite is the ascertainment of the intention of the Legislature in the enactment thereof. The rule has been stated in State ex inf. Dalton v. Dearing reported 263 S. W.

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2d 381, wherein the Supreme Court of Missouri said, l. c. 386:

"Another general rule of importance in determining the true meaning and scope of constitutional or statutory provisions is the intent and purpose of the lawmakers. *Graves v. Purcell*, 337 Mo. 574, 582(2), 85 S. W. 2d 543, 547(3)."

Another rule of importance in statutory construction is one which presumes the knowledge of other laws relating to the subject matter on the part of the Legislature in its consideration of a proposed law. The rule is stated thusly in *Sikes v. St. Louis & S F R Co.*, 127 Mo. App. 326, l. c. 334-35:

"In examining this statute and seeking to arrive at the legislative intention therein manifested, we must do so with the knowledge that the Legislature is presumed to know the existing state of the law relating to subjects with which they deal at the time they act on a given question, and therefore are deemed to have dealt with the matter in the light of the state of the law then existing. (See *Sutherland on Statutory Construction* (2 Ed.), sec. 447.) * * * * *

With these rules in mind, we have examined the provisions of Section 52.270, RSMo 1949, relating generally to the subject matter of the compensation of collectors of revenue in the various counties of the state. Your attention is particularly directed to the following portion of this statute which, after imposing maximum limitations upon compensation of such officials, concludes with the following significant language:

"* * * * but shall not apply to commissions on the collection of back and delinquent taxes and ditch and levee taxes, and the compensation of the county collector for the collection of levee taxes and ditch taxes, collected for drainage purposes, shall be one per cent of the amount collected."

This statute refers to Section 52.260, RSMo 1949, which provides the schedule of fees which may be retained in certain counties, but is inapplicable to counties in which the compensation

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of collectors of revenue is fixed by statute. The first sentence of this latter statute reads 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: * * * * *"

Giving due regard to the rule enunciated in the Sikes case, supra, it is apparent that in the enactment of Section 52.420, MoRS, Cum. Supp., 1953, the Legislature was chargeable with knowledge of the quoted portion of Section 52.270, RSMo 1949. In these circumstances it must be held that in fixing the salary provided in Section 52.420, MoRS, Cum. Supp., 1953, due consideration was given to all of the then existing fees, commissions, penalties, charges and compensation of every nature previously received by collectors of the revenue in counties of the second class, and that the all-inclusive phraseology employed in the statute discloses a legislative intent that no other compensation in any form may be received by such officers.

It is also to be noted that the statute fixing the salary of collectors of revenue in counties of the second class was enacted long after the statute relating generally to commissions of collectors of revenue. The latter statute has retained its present form substantially for many years, whereas the salary statute first appeared as an act found Laws of Missouri, 1945, page 1556, and subsequently in Laws of Missouri, 1951, page 403. The relative dates of enactment of the two statutes bear upon the construction to be accorded them following the rule found in *Vining v. Probst*, 186 S. W. 2d 611, from which we quote, l. c. 615:

"The 'Small Loan Laws' deal primarily with the subject of interest; but their effect is restricted to loans and credits not exceeding \$300 in value or amount. No provision is therein incorporated for the repeal of the general interest laws as they existed in 1927; but existing statutes may be repealed by necessary implication if a later act is so repugnant to the former that the two cannot stand, even though no mention is made

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of the former act in the later.
State ex rel. Matacia v. Buckner,
300 Mo. 359, loc. cit. 367, 254 S.
W. 179. However, repeal by impli-
cation is not favored, and both
statutes will be permitted to stand
if it can be done upon any reasonable
construction. Decker v. Deimer, 229
Mo. 296, 129 S. W. 936, loc. cit. 948;
Gasconade County v. Gordon, 241 Mo. 569,
145 S. W. 1160, loc. cit. 1163; State
ex rel. Karbe v. Bader, 336 Mo. 259,
78 S. W. 2d 835, loc. cit. 839. If
there be any conflict between two
statutes dealing with the same com-
mon subject matter, the statute which
deals with it in a minute and particular
way will prevail over one of a more gen-
eral 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. * * * * *

CONCLUSION

In the premises we are of the opinion that the collector of revenue in a county of the second class is entitled to receive for his services the salary provided in Section 52.420, MoRS, Cum. Supp., 1953, and that he may not receive further or additional compensation arising from the collection of drainage or levee district taxes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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