

COUNTY OFFICERS:  
TOWNSHIP OFFICERS:  
SOCIAL SECURITY:

Township collectors and their deputies, if any, are not subject to the provisions of House Bill 635 (71st General Assembly). Such collectors are not county officers within the meaning of the amendatory provisions of such bill, and therefore their deputies, if any, are not included in the extension of social security coverage provided for in such bill to employees of county officers compensated wholly by fees derived from sources other than county or state moneys.

October 27, 1961

Honorable Charles D. Trigg  
Comptroller and Budget Director  
State Capitol Building  
Jefferson City, Missouri



Dear Mr. Trigg:

You have requested an opinion from this office as follows:

"In view of the provisions of House Bill 635, passed by the 71st General Assembly, and other applicable statutes relative to OASI coverage, we would appreciate an opinion from your office answering the following questions:

1. Since, to our knowledge, there is no statutory authority for township collectors to employ deputies, are the wages or fees paid such persons subject to social security taxes under the provisions of Sections 105.300 and 105.365 RSMo 1959, as amended by House Bill 635, which becomes a law October 13, 1961?
2. Does the passage of House Bill 635 in any way change the official opinion of May 5, 1953, regarding persons selling license plates, titles, etc?
3. Does the passage of House Bill 635 in any way change the official opinion dated July 21, 1951, regarding members of the State Board of Law Examiners, the Executive Director of the Missouri Bar and the General Chairman of the Advisory Committee of the Missouri Bar?"

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House Bill 635, effective October 13, 1961, by amending the definition of "employee" extends social security coverage to "county officers remunerated wholly by fees from sources other than county funds." Said bill enacts a new Section 107.365, whereby it is further provided as follows:

"Any county officer who is compensated wholly by fees derived from sources other than county or state moneys shall pay into the county treasury out of fees received by him amounts equal to the contributions required to be paid by the county under section 105.370 and shall collect from all deputies, assistants and employees in his office and turn over to the officer or agent of the county charged with the payment thereof to the state agency the amounts required to be collected and paid under section 105.370."

Your first question relates to whether wages or fees paid to deputies of township collectors are subject to social security taxes under the provisions of House Bill 635. You note the fact that there is no statutory authority for township collectors to employ deputies.

Your question appears to assume that if there were statutory authority for township collectors to employ deputies the wages of such deputies or the fees paid such persons would be subject to the provisions of the new law. However, a careful study of the statute leads to the conclusion that neither township collectors nor their deputies, even if the law authorized the employment of any deputy, come within the language of the amended law.

The new law applies to "county officers". This raises the question of whether township officers may be considered county officers within the meaning of the law. In our opinion, a township officer is not a county officer and therefore in no event would the provisions of the new law be applicable to any township officer even if he otherwise met the requirements of that law.

It is true that there is no all-inclusive definition which can be given to the words "county officer". In State v. Carter, Mo. Sup., 319 S.W. 2d 596, the Supreme Court, en banc, pointed out that there is no comprehensive definition of the words "county office". The legislative intent should govern, but such intent should be ascertained from the words used if possible. In this connection the court held, 319 S.W. 2d. 1.c. 600:

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"\* \* \* In determining the intent and meaning of the words, county office, as used in this statute, the words must be considered in their context and sections of the statutes in pari materia, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words. \* \* \*"

In that case it was held that a member of a county central party committee was not a county officer within the meaning of the corrupt practices act. The opinion cites a number of cases involving various offices which were held not to be county offices. Among such cases are the following: State ex rel Buchanan County v. Imel, 242 Mo. 293, 146 S. W. 783, holding that a probate judge is not a county officer within the meaning of a constitutional provision authorizing the general assembly to regulate the fees of a county officer; State ex rel Asotsky v. Hicks, 346 Mo. 640, 142 S.W. 2d 472, holding that justices of the peace were not county officers within the meaning of the statute providing for the filling of vacancies by appointment of the governor; and State ex rel Dodd v. Dye, Mo. App., 163 S. W. 2d 1055, holding that judges of the county court elected from districts were not county officers within the meaning of the statute providing for filing fees of county officers.

In Harrison and Mercer County Drainage District v. Trail Creek Township, Mo., 297 S.W. 1, the court held that it had jurisdiction over the appeal in that case because the defendant Trail Creek Township was a subdivision of the state. In the opinion the court stated, l.c. 4:

"The township organization law provides for a distinct and separate government of the township, as a unit of government, in those counties of the state voting to adopt the township organization plan. It provides for the election of certain township officers and prescribes their governmental duties, powers, and authority. It provides for the assessment, levy, and collection of the revenue in such organized townships, not only to defray the usual and ordinary township governmental charges and expenses, but also for road and bridge uses and purposes. In other words, the general township organization law, and the constitutional authority under which such general law was enacted, in our judgment and opinion, contemplates and provides for the creation of a separate and distinct unit

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of government, known as an organized township, having certain governmental powers and charged with certain governmental obligations and duties, similar to those of a county."

It is to be noted that the constitutional provision which conferred jurisdiction on the Supreme Court related to cases where a county or other political subdivision of the state is a party, and the court concluded that the party, although not a county, was in fact a unit of government, that is, a political subdivision, "separate and distinct from the county." In State ex rel Wamack and Welborn v. Affolder, Mo. App., 257 S.W. 493, it was held that the prosecuting attorney had no duty to represent or act for a township although it was the duty of the prosecuting attorney to act for the county.

Section 105.300, RSMo 1959, containing definitions used in the statute involved in this question, defines in paragraph 8 a "political subdivision" as "any county, township, municipal corporation, school district, or other governmental entity of equivalent rank." It thus appears quite clearly that the legislature intended to differentiate between counties and townships. When amending the definition of "employee" in the new act, reference was made only to county officers as separate and distinct from township officers or officers of any other political subdivisions. While it is true that township collectors collect taxes for the county and state as well as the township itself (and also must account to the county court, Section 139.420), such fact does not make the collector a county officer any more than it makes him an officer of the school district by reason of collecting school taxes. In our opinion, the words "county officer" as used in the new statute were not intended to and do not include township officers.

The new law does not extend coverage to all county officers compensated by fees nor to their deputies and employees. The extension of coverage is carefully limited to those county officers who are compensated "wholly by fees derived from sources other than county or state moneys". Thus, to come under the act the compensation of the county officer must be derived wholly by fees, and the fees themselves must be derived from sources other than county or state moneys. In our opinion, township collectors are compensated by fees which are derived from county or state moneys, at least in part. They are required to collect taxes and their compensation is a commission, based on a percentage of such amount so collected by them. The taxes collected constitute the county or state moneys as and when collected. The fees or commissions are a portion of such moneys and are payable out of the taxes collected. Note Section 139.430 RSMo 1959 and Section

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139.320 RSMo 1959 which authorize the collector to deduct his commissions from the taxes collected, and see Section 139.440, RSMo 1959, providing that a township collector who fails in performing certain duties "shall forfeit his commission on all moneys collected". Hence, in any view of the case township collectors would not come within the scope of the new statute.

It would appear that the new law is very limited in scope, inasmuch as there are very few county officers who may be held to be compensated wholly by fees derived from sources other than county or state moneys. One such officer who would fit the description in the new law would be public administrators, who are compensated wholly by fees derived from the estates they administer. County surveyors would also appear to come within the scope of the new statute. In any event, township collectors are not county officers within the meaning of House Bill 635, nor are they compensated wholly by fees derived from sources other than county or state moneys. Hence, neither said collectors nor their deputies, if any, are covered by the provisions of the new statute.

Your second question is whether the passage of House Bill 635 in any way changes the official opinion of May 5, 1953, regarding persons selling license plates, titles, etc. The opinion of May 5, 1953, was to the effect that persons selling such licenses are not covered. The new law has no effect whatsoever upon that opinion. Such persons are agents of the State Department of Revenue. Inasmuch as persons selling such license plates and titles are not county officers, they would not come within the scope or intent of the new statute.

The third question inquires whether House Bill 635 in any way changes the official opinion dated July 21, 1951, regarding the members of the State Board of Law Examiners, the Executive Director of the Missouri Bar and the General Chairman of the Advisory Committee of the Missouri Bar. Inasmuch as none of the persons mentioned in said opinion may be deemed or held to be county officers, it is our opinion that the passage of House Bill 635 in no way affects or changes the opinion of July 21, 1951.

#### CONCLUSION

It is the opinion of this office that neither township collectors nor their deputies, if any, are subject to the provisions of said House Bill 635. It is the further opinion

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of this office that the passage of House Bill 635 in no way changes the official opinions of May 5, 1953, and July 21, 1951, concerning the status of persons selling license plates and titles as agents of the State Department of Revenue, members of the State Board of Law Examiners, the Executive Director of the Missouri Bar and the General Chairman of the Advisory Committee of the Missouri Bar.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

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