

Opinion No. 363 - 1962, 32 - 1963  
Answered by Letter (O'Malley)



January 16, 1963

Honorable Charles G. Hyder  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Mr. Hyder:

This office is in receipt of your letter of January 12, 1963 with reference to the request of your predecessor in office, Mr. Raymond A. Roberts, for an official opinion touching the authority of the county collector of St. Francois County to employ certain collection procedures. Mr. Roberts' request is here quoted:

"It is our understanding that several counties in Missouri have arrangements whereby county real estate and personal property taxes may be paid by the taxpayers at local banks within the county, and the County Collector subsequently mails a receipt for the payment of such taxes.

"Our County Collector is anxious to set up such a procedure in St. Francois County so that he may utilize a bank in Bonne Terre in the north end of the County, in Flat River in the central part of the county, in Bismarck and Leadwood in the west end of the county, as well as the Collector's office in the south end of the county, for the convenience of the taxpayers.

"Our question is, one, may the County Collector utilize banks as collection points for county taxes. Two, if so; A. What sort of depository agreement should be entered with the bank so utilized. B. What sort of pledge of security should be given by the bank. C. What method of receipting payment of taxes should be filed."

In your letter of January 12, 1963, you stated that the question posed by Mr. Roberts was of continuing interest to you, but you have not indicated, as requested of you by phone a few days ago, whether the county court of St. Francois County has entered an order of record requiring the county collector to make daily deposits in depositories selected by the county court as authorized by paragraph 2 of Section 52.020 RSMo Cum. Supp. 1961. This could be an important factor in determining whether the desired collection procedures may be employed. Furthermore, Mr. Roberts' inquiry does not ask this office to construe any particular statute in order to measure the powers of the county collector in relation thereto. In view of such facts this letter of advice is submitted in lieu of a formal opinion requested by you and Mr. Roberts.

We first direct attention to that portion of Section 52.020 RSMo Cum. Supp. 1961, disclosing how the county collector's official bond is to be conditioned, such statute providing, in part, as follows:

"The bond shall be conditioned that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years constituting his term of office, and that he will in all things faithfully perform all the duties of the office of collector according to law."

Paragraphs 2 and 3, Section 52.020 RSMo Cum. Supp. 1961, provide as follows:

"2. In all third and fourth class counties the county court may require the county collector to deposit daily all collections of money in the depositories selected by the county court in accordance with the provisions of sections 110.130

to 110.150 RSMo, to the credit of a fund to be known as 'County Collector Fund'. The depositaries are bound to account for the moneys in the county collector's fund in the same manner as the public funds of every kind and description going into the hands of the county treasurer and shall provide security for the deposits in the manner required by section 110.010, RSMo. If daily deposits are required to be made, the county courts may also require that the bond of the county collector shall be in the sum equal to one-fourth of the largest amount collected during any one month of the year immediately preceding his election or appointment, plus ten per cent of the amount. No county collector shall be required to make daily deposits for days when his collections do not total at least one hundred dollars.

"3. The collector shall not check on the county collector's fund except for the purpose of making the monthly distribution of taxes and licenses collected for distribution as provided by law or for balancing accounts among different depositaries."

If the county court of St. Francois County has made an order requiring the county collector to make daily deposits as authorized by paragraphs 2 and 3 of Section 52.020 RSMo Cum. Supp. 1961, cited above, it is obvious that such county collector may not utilize banks of his own choice throughout St. Francois County in which to place collections made by him. If no such order has been made by the county court it would seem that the county collector would be charged with a primary duty as set forth in the following language from Section 139.210 RSMo 1959:

"1. Every county collector and ex officio county collector, except in the city of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same, less his commission, into the county treasuries and to the director of revenue."

Until such time as the county collector turns over his collections as may be directed under Section 52.020 RSMo Cum. Supp. 1961, or as directed by Section 139.210 RSMo 1959, both statutes cited above, he will hold such collections as an insurer under the rule as stated in *City of Fayette v. Silvey*, 290 S.W. 1019, 1.c. 1021:

"The general rule, which is the rule in this state, is that one of the duties of a public officer intrusted with public money is to keep such funds safely, and that duty must be performed at the peril of such officer. Thus, in effect, he is an insurer of public funds lawfully in his possession."

A careful search has been made of Chapter 52 and 139 RSMo 1959, as amended, and nowhere have we found any authority vested in the county collector to select depositories in which he may place his collections prior to the time he makes his settlements and turns over such funds as required by Section 139.210 RSMo 1959, and thereby relieve himself as an insurer of said funds. If the county collector desires to meet taxpayers at various points in the county and collect their taxes as authorized by Section 139.010 RSMo 1959 his authority to render such service is spelled out in that statute. And unless the county court requires the county collector to make daily deposits of his collections under Section 52.020 RSMo Cum. Supp. 1961, cited supra, we find no statute requiring that he deposit his collections in any specific place of safe-keeping pending his turnover of the same each month as required by Section 139.210 RSMo 1959.

Until such time as you can point to specific statutory authorization allowing the county collector of St. Francois County to utilize various banks in the county as collection points for county taxes and cause such banks to enter into depositary agreements with the collector, we must say that such authority does not exist under the following language from *Lamar Township v. City of Lamar*, 169 S.W. 12, 261 Mo. 171, 1.c. 189:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way they are agents, but they are never general agents, in the sense that

they are hampered by neither custom nor law and in the sense that they are absolutely free to follow their own volition. Persons dealing with them do so always with full knowledge of the limitations of their agency and of the laws which, prescribing their duties, hedge them about. They are trustees as to the public money which comes to their hands. The rules which govern this trust are the law pursuant to which the money is paid to them and the law by which they in turn pay it out. Manifestly, none of the reasons which operate to render recovery of money voluntarily paid under a mistake of law by a private person, applies to an officer. The law which fixes his duties is his power of attorney; if he neglect to follow it, his cestui que trust ought not to suffer. In fact, public policy requires that all officers be required to perform their duties within the strict limits of their legal authority."

We are enclosing a copy of an opinion of this office dated December 27, 1954, addressed to Honorable J. A. Rouveyrol, Commissioner of Finance, construing Missouri's depository law found at Chapter 110 RSMo 1949. Some minor changes have been made in the law since the opinion was written, but the principles of law stated therein are still applicable.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

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Enc.