

COUNTIES:
COLLECTORS:
COMPENSATION:
STATUTES:

At no time during the term of office of the county collectors within the classification of Subdivision (14), Section 52.260, which collectors took office in March, 1959, for a four year term, were such collectors obliged to deduct from their commissions expenditures for office space, office equipment or supplies.

OPINION NO. 137

July 29, 1963

Honorable Haskell Holman
State Auditor
Capitol Building
Jefferson City, Missouri



Dear Mr. Holman:

This is in response to your recent request for an opinion of this office which request reads as follows:

"A problem has arisen in connection with the auditing of records of certain county collectors in third class counties, and I present the problem herewith for your consideration and opinion:

"The collectors with whom we are concerned are those in the classification of subdivision (14), Section 52.260, who took office on the first Monday in March, 1959 or for any term or terms prior to the one beginning in 1959. At the time such collectors took office, their compensation was set by subdivision (14), Section 52.260, RSMo. 1949, which provided in part:

"The said collector shall pay all salaries and other expenses of his office and all other costs of collecting the respective revenues; * * *"

"In 1959, the 70th General Assembly amended Section 52.260 so as to delete the requirement set out above. The new form of Section 52.260 took effect after the commencement of the terms of the collectors with whom we are concerned. The requirement that such collectors pay deputy and clerical hire was retained in Section 52.280 which has been in effect throughout.

"At all times relevant to this inquiry, Section 49.510 has been in effect in its present form which provides:

"'It shall be the duty of the county to provide offices or space where the officers of the county may properly carry on and perform the duties and functions of their respective offices. Said county shall maintain, furnish and equip said offices and provide them with the necessary stationery, supplies, equipment, appliances and furniture, all to be taken care of and paid out of the county treasury of said county at the time and in the manner that the county court may direct.'

"The question which arises from this situation is whether these collectors were, at any time within the period in question, liable for the payment of costs of the supplies and furnishings enumerated in Section 49.510 by reason of the above quoted provision of Section 52.260, RSMo. 1949, which required such a collector to pay 'all salaries and other expenses of his office and all other costs of collecting the respective revenues; * * *'

"If it is your opinion that prior to the effective date of the present Section 52.260, RSMo. 1959, such collectors were obligated to pay for the furnishings and supplies enumerated in Section 49.510 and that they were relieved of this obligation by the amendment of this section which occurred after they took office in 1959, then I would request your further opinion as to whether the release of these collectors from such obligation would amount to an increase in compensation 'during the term of office' as prohibited by Section 13, Article VII, Constitution of Missouri, 1945."

At the outset, we should reiterate the principle that where an officer's compensation is fixed by statutory formula and that formula is later changed so as to increase his compensation, the formula in effect at the commencement of his term continues to determine his compensation throughout his term of office. This was discussed in opinions of this office issued to Mrs. G. B. Stewart on January 26, 1961, and to Honorable Milton Carpenter on December 30, 1959, copies of which opinions are attached herewith.

Therefore, we are initially concerned with the method of determining compensation of county collectors in effect on the day the collectors involved here took office. On that date, the relevant portions of Section 52.260 provided that the collector would receive certain commissions of the various types of revenue collected, required the collector to "pay all salaries and other expenses of his office and all other costs of collecting the respective revenues; . . .," and limited such collectors to a maximum compensation of ten thousand dollars per year.

As pointed out in your letter, the requirement that such a collector "pay . . . other expenses of his office and all other costs of collecting the respective revenues" was removed by the 70th General Assembly. Senate Bill 62, Laws 1959. Parenthetically, we might also note that the 1959 revision omitted the ten thousand dollar limitation on annual salary. The date on which the form of Section 52.260, thus revised, became law was August 29, 1959. Laws 1959, page 14a. The ten thousand dollar salary limitation as well as a requirement that "expenses of his office and other costs of collecting the revenue" would be chargeable against his commissions, was re-enacted by the 71st General Assembly and took effect on October 13, 1961. Senate Bill 214, Laws 1961, pp. 287, 687.

Prior to the 1959 revision of Section 52.260, and subsequent to the 1961 amendment of Section 52.270, there was an apparent conflict between those sections and the provisions of Section 49.510 relating to office supplies and rental of office space. The form of Section 52.260 in effect when these collectors took office required the collectors to pay "all" expenses of their offices. Standing alone, this provision would seem to cover everything mentioned in Section 49.510, for "stationery, supplies, equipment, appliances and furniture" are certainly necessary "expenses" of any office and a prerequisite to the functioning of a county collector's office.

However, it is a well accepted principle of statutory construction that where two statutes purport to regulate the same subject matter, they will be read in harmony when possible. As our Supreme Court said in State v. Ludwig (1959), 322 S.W.2d 841, 849:

"* * *the test of repeal of statutes by implication is repugnancy: 'Repeals by implication are not favored--in order for a latter statute to operate as a repeal by implication of an earlier one, there must be such manifest and total repugnance that the two cannot stand; where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication; if they are not irreconcilably inconsistent, both must stand.' State ex rel. and to Use of Geo. B. Peck Co. v. Brown, 340 Mo. 1189, 1193, 105 S.W.2d 909, 911. One of these statutes dealing with the rate of commissions and the other limiting the amount of commissions an ex-officio collector may retain are obviously not repugnant or so in conflict that both may not operate. As previously indicated, the statutes concern the same general subject, they are related, they modify one another but may and, if possible, should be construed together (State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 247 S.W. 129), one prescribing the rate and the other limiting the commissions to be retained by an ex-officio collector. The statutes, therefore, are not in irreconcilable conflict so that the re-enactment of section 54.320 in 1951 may be said to have impliedly repealed section 52.270. * * *"

We do not believe that the apparent conflict between Sections 49.510 and 52.260 is such as to render impossible their having simultaneous effect upon the collectors with whom we are concerned. A strong argument may, of course, be made that the use of the universal "all" in Section 52.260 prohibits the application of any statute which places

the obligation to pay for services or supplies used by collectors anywhere but on the officers themselves. However, a cardinal rule of statutory interpretation is that a statute will be interpreted so as to have reasonable effects; and, in arriving at the proper interpretation the alternative effects will be considered. E. R. Darlington Lumber Co. v. Missouri Pac. Ry. Co. (1909), 216 Mo. 658, 116 S.W. 530, 534; Memmel v. Thomas (Mo. App. 1944), 181 S.W.2d 168, 169-170.

The only alternative to the interpretation adopted herein would be that Section 49.510 does not apply at all to the collectors mentioned in your request. Hence, such collectors would not be entitled to be furnished office space. As a result of this, they would be obliged to provide their own or pay rental for space in the county courthouse for they would have no better claim to such space free of charge than would any other citizen who desired to set up a business at such a location. Under the interpretation which we reject, a collector would be obliged to pay for all office furnishings and equipment needed for the operation of his office in addition to day-to-day needs such as stationery. The acquisition of quasi-permanent appliances such as tabulating and computing machines, electric typewriters, etc., aside from involving a great deal of expense, would come at such irregular intervals and would vary so greatly from county to county, that exclusion of these collectors from the application of Section 49.510 would work an unjust and disproportionate burden upon them.

As a matter of incidental interest, this office has held on two prior occasions that county collectors of this class are entitled to the benefits accorded all county officers by Section 49.510. On December 30, 1959, this office issued an opinion to the Honorable Milton Carpenter which held in part:

"* * * The payment of salaries of deputy and clerical hire in such counties would not be the obligation of the county but would be the obligation of the collector, but the other expenses of the office and other costs of collecting the revenues would be the obligation of the county under Section 49.150, RSMo 1949; * * *."

A similar conclusion was reached in an opinion issued by this office on January 19, 1962. A copy of each of those

opinions is attached herewith.

By way of summary, we should point out that, in our opinion, when these collectors took office in March, 1959, they were not obliged to deduct from their commissions expenditures for any of the items enumerated in Section 49.510 and that this condition has persisted throughout, the counties being at all times obliged to provide those items. The ten thousand dollar limitation as to these collectors has been in effect at all times applicable to this opinion: from March to August 29, 1959, by statute; from August 30, 1959, until October 13, 1961, by constitutional prohibition against salary increase during a term of office; from October 14, 1961, to the present by the current form of Section 52.270, Cum. Supp. 1961.

Conclusion

Therefore, it is the opinion of this office that at no time during the term of office of the county collectors within the classification of Subdivision (14), Section 52.260, which collectors took office in March, 1959, for a four year term, were such collectors obliged to deduct from their commissions expenditures for office space, office equipment or supplies.

This opinion, which I hereby approve, was prepared by my assistant, Albert J. Stephan, Jr.

Very truly yours

THOMAS F. EAGLETON
Attorney General

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