

Opinion No. 87  
Answered by letter

July 8, 1964

Honorable M. E. Morris  
Director, Department of Revenue  
State of Missouri  
P. O. Box 398  
Jefferson City, Missouri 65102

Dear Mr. Morris:

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

"I herewith submit request for an official opinion on the following subject: Pertaining to Compensation of County Collectors, coming within the provisions of subsection (15), of Section 52.260 Missouri Revised Statutes, enacted by the recent General Assembly as Senate Bill 259.

"Sub-section (15) of Section 52.260 reads as follows: 'In counties wherein the total amount levied for any one year exceeds four million dollars (4,000,000.00), a commission of one per cent on the amounts collected'.

"St. Charles County being a county of the third class, comes within the provisions of sub-section (15) for the tax year ending 2-29-1964, and there is a possibility of other third class counties, namely, Boone, Cape Girardeau, Franklin, Platte, Cole, Pettis and possibly others which may fall within this category sometime in the near future.

"If county collectors for the above mentioned counties were allowed to retain compensation at the rate of one per cent on the amounts collected, there would be the possibility

*Note: The letter attached to Mr. Morris dated July 14, 1964 is an integral part of this letter and is to remain attached to it.*

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of these collectors being allowed to retain enormous sums as compensation.

"Section 52.270 determines maximum amount of commissions and fees to be retained by collectors coming within the provisions of sub-sections 1 through 14 of Section 52.260, however, no provision is made for those collectors of third class counties who have at present, or may at a later date, come within the provisions of sub-section (15) of Section 52.260.

"My question is as follows:

"How may the maximum amount of compensation, (other than that provided for in paragraph 3 of Section 52.270), to be retained by a county collector of a third class county, coming within the provisions of sub-section (15) of Section 52.260, be determined?"

This problem was treated generally in an opinion of this office issued on September 4, 1963, to the Honorable Alfred A. Speer, which reads in part as follows:

"Since Subdivision (15) applies to all counties wherein the 'total amount levied for any one year exceeds four million dollars . . .', it is conceivable that it could apply to counties of the third and fourth class. Because the collectors in those counties are compensated by commissions, it is possible that Senate Bill No. 259 could cause an increase in their compensation by making the provisions as to limitations on the amount of commissions collectors are allowed to retain found in Section 52.270, 1961 Cum. Supp., inapplicable to such collectors. This section imposes limitations on the amount of commissions retainable by collectors in the classifications indicated in Subdivisions (1) through (14) of Section 52.260, but makes no reference to the collectors who come within the newly created Subdivision (15).

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"However, we are not advised as to whether any counties of the third and fourth classes, by virtue of their respective tax levies, do in fact come within the provisions of Subdivision (15); and any definitive pronouncement in this area would be based solely on speculation. Suffice it to say that if Subdivision (15) did increase the amount of commissions retainable by removing certain collectors from the limitations set out in Section 52.270, supra, Section 13, Article VII of our Constitution would prevent such collectors from receiving compensation in excess of the presently established limits during their current terms of office. State ex rel. Emmons v. Farmer, (Mo. Sup. 1917) 196 SW 1106, 1109[5,6]."

When the Legislature created subdivision (15) of Section 52.260, RSMo Cum. Supp. 1963, without imposing a limitation upon the subdivision (15) collectors, it apparently did not foresee the possibility that any third or fourth class counties would subsequently fall into this classification. However, since Section 52.270, RSMo was not amended, and therefore no express limitation upon the compensation of subdivision (15) collectors has been made, the literal interpretation of the two sections, read together, is in accord with your interpretation that collectors of such counties, subject to the constitutional prohibition against increases in compensation during current terms of office, will qualify for the unduly large salaries. For example, a collector in a county wherein the total levy amounts to more than four million dollars could properly claim as his annual compensation a sum in excess of forty thousand dollars.

It is, of course, within the realm of possibility that a court could, by application of one of the accepted rules of statutory interpretation, construe the limitation on subdivision (14) salaries found in Section 52.270 as governing salaries of collectors in subdivision (15) counties, in spite of the fact such counties are not expressly mentioned therein. However, in view of the fact that the Legislature will convene before any collector can claim any of the salaries with which we are here concerned, we find it unnecessary to further explore this possibility at this time.

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Unquestionably, the most effective way of avoiding the distinct possibility that some county collectors will be paid in excess of \$40,000 per year is by legislation which may impose an express limitation upon compensation of collectors in counties referred to in subdivision (15) of Section 52,260, RSMo Cum. Supp. 1963.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

Enclosures

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July 14, 1964

Honorable M. E. Morris  
Director, Department of Revenue  
State of Missouri  
P. O. Box 898  
Jefferson City, Missouri 65102

ATTENTION: W. T. Scott

Dear Mr. Morris:

This is in response to the request received from your office for clarification of our recently issued Opinion No. 87 dated July 8, 1964. You have asked specifically whether the collector of St. Charles County may, under the facts set out in the request for that opinion, presently qualify for the compensation provided by subdivision (15) of Section 52.260, RSMo Cum. Supp. 1963. We further understand that the levy in St. Charles County now exceeds four million dollars per year.

We are of the opinion that the collector in question is not entitled to the benefits conferred by subdivision (15) of Section 52.260, supra, for the reason that this would amount to an increase in compensation during his present term of office as prohibited by Section 13, Article VII, Mo. Const. 1945. It is correct that a county officer may properly, during the same term of office, advance to different brackets within a formula established by statute if that formula is the one which was in effect at the time he commenced his current term. State ex rel. Moss v. Hamilton, 303 Mo. 302, 260 SW 466; State ex rel. Harvey v. Linville, 318 Mo. 698, 300 SW 1066. However, the case at hand presents a slightly different problem.

At the time the county collector in question commenced his current term of office (March 1963), there was no subdivision (15), Section 52.260, RSMo Cum. Supp. 1963, in effect. Subdivision (15) was added by the 72nd General Assembly to the then existing Section 52.260, and became effective on October 13, 1963.

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Consequently, since this portion of the formula set out by Section 52.260 was not in effect at the time this collector commenced his current term, he may receive no benefits from it and will retain as compensation only that amount provided for by subdivision (14) of Section 52.260, as limited by Section 52.270.

As discussed in Opinion No. 303 dated September 4, 1963, the fact that the limitations imposed as described above on this collector remain in effect does not affect the amount which the collector retains since the constitutional prohibition upon increases of his compensation does not affect the other provisions of the law. A copy of the opinion last referred to is attached herewith.

In brief, the collector of St. Charles County, as to his personal compensation, is still governed by the formula set out in subdivision (14) of Section 52.260, RSMo 1959, and limited as provided by subparagraph 2 of Section 52.270, RSMo Cum. Supp. 1961, the latter of which provides in part:

" . . . and out of the residue of commissions in his hands after deducting the amounts so allowed, the collector may retain a compensation for his services at the rate of ten thousand dollars per year. If the residue of commissions is less than sufficient to pay the above compensation, the entire residue shall be allowed to him as full payment for his services. If the residue is more than sufficient to pay the compensation, the surplus shall be paid over to the state, school, county and city in the proportion which the amount collected from each bears to the total amount of collections."

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

Attachment  
AJS:lt