

COUNTY COLLECTORS:
COMPENSATION:
CONSTITUTIONAL LAW:

Collectors of third class counties wherein the total amount of taxes levied for any one year exceeds four million dollars can retain all commissions and fees earned by them.

OPINION NO. 386

September 18, 1970



Honorable Haskell Holman
State Auditor
State of Missouri
Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Holman:

This is to acknowledge receipt of your request for an opinion from this office which reads in part as follows:

". . . Pertaining to compensation retainable by collectors of third class counties, whose term of office began on the First Monday of March 1967, coming within the classification of subsection (15) of Section 52.260 Cumulative Supplement 1967.

"Section 52.270 Cumulative Supplement 1967 determines the maximum amount of current commissions and fees to be retained by a collector or ex-officio collector coming within the classifications indicated in subsections 1 through 14 of Section 52.260. However, no provision is found in Section 52.270 pertaining to limit of amount retainable by a collector coming within the classification, 'In counties wherein the total amount levied for any one year exceeds four million dollars, ****' as contained in the provisions of Subsection 15 of Section 52.260.

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"The question arising from this situation is as follows:

"1. Are collectors of all counties of the third class wherein the total amount of taxes levied for any one year exceeds four million dollars entitled to retain, without limitation, all commissions and fees earned by them?"

Section 52.260, RSMo 1969, is relevant to the issue presented and reads in part as follows:

"The collector in counties not having township organization shall collect and retain the following commissions for collecting all state, county, bridge, road, school and all other local taxes, including merchants', manufacturers' and liquor and beer licenses, other than back, delinquent and ditch and levee taxes, and the commissions constitute his compensation except in counties where the collector is paid a salary in lieu of fees:

* * *

"(15) In counties wherein the total amount levied for any one year exceeds four million dollars, a commission of one percent on the amounts collected."

Senate Bill No. 259 of the Seventy-second General Assembly became effective on October 13, 1963, and effected a repeal of Section 52.260, RSMo 1959, and an enactment of a new section to be known as 52.260 which specifically included subsection 15. As indicated in your opinion request, Section 52.270, RSMo 1969, imposes limitations on the amount of commissions retained by collectors in third class counties in the classifications indicated in subsections (1) through (14) of Section 52.260, RSMo 1969, but makes no references to collectors who come within subsection (15).

In Opinion of the Attorney General No. 303, Speer, 9-4-63, it was held that Senate Bill No. 259 which specifically included subsection (15), would not during the term of the collectors of third and fourth class counties then in office, authorize the payment to such collectors of compensation in excess of that authorized to be retained by collectors under the provisions of Section 52.270, RSMo, for the reason that such action would constitute a violation of Section 13, Article VII of the Missouri Constitution

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of 1945. (Copy of Opinion attached). It should be noted, however, that the following comment was made on page 3 of the opinion:

"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. . . ."

We are therefore persuaded that Section 52.270, RSMo 1969, does not place a limitation on commissions and fees earned by collectors of all counties of the third class, coming within the classification of subsection (15) of Section 52.260, RSMo 1969.

In addition, it is our view that Section 13, Article VII, Constitution of Missouri, 1945, the prohibition against an increase in an officer's compensation during his term of office, would not apply to collectors of third class counties whose term of office began on the first Monday of March 1967. Section 52.010, RSMo 1969, provides that the collector of revenue, shall be elected in each of the counties of this state, except counties under township organization, for four years. Section 52.015, RSMo 1969, provides that the terms for which collectors are elected expire on the first Monday in March of the year in which they are required to make their final settlement for the tax book collected by them. Therefore, under the factual situation presented, Senate Bill No. 259 which specifically included subsection 15 and which became effective on October 13, 1963, would apply only to collectors of third class counties whose term of office commenced on March 1, 1963. There is authority for this proposition in the case of State ex rel Emmons v. Farmer, (Mo. Sup. 1917), 196 S.W. 1106, 1109 (4) where it was held that the constitutional provision forbidding an increase or decrease of compensation during a term of office has reference to the period fixed as a "term" by the statute only, and in no way refers to the individual who may happen to be the incumbent for more than one term. The court further pointed out that each official term stands by itself.

CONCLUSION

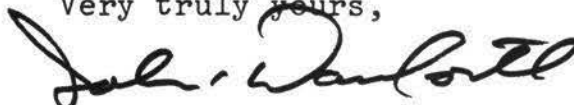
It is the opinion of this office that collectors of third

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class counties wherein the total amount of taxes levied for any one year exceeds four million dollars can retain all commissions and fees earned by them.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, B. J. Jones.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J".

JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 303
9-4-63, Speer