

SOCIAL SECURITY:  
COUNTY COLLECTOR:

1. The county is liable to make res-  
titution to the collector of revenue  
for personal funds of the collector

used to pay the county's obligation under the Social Security Law.

2. An action to recover money paid by collector of revenue for the  
county in connection with employers' contributions under the Social  
Security Act must be maintained within five years.

OPINION NO. 35

October 19, 1971

Honorable John R. Sims  
Prosecuting Attorney  
Newton County  
2nd Floor Courthouse  
Neosho, Missouri 64850



Dear Mr. Sims:

This official opinion is rendered pursuant to the request con-  
tained in your letter concerning reimbursement of the collector of  
revenue of Newton County for social security taxes paid with per-  
sonal funds.

More specifically, the questions raised are as follows:

1. "Is the County liable to the Collector of  
Revenue for the payments he has made from  
his personal funds for social security and  
which should have been paid by the County,  
and should the County reimburse him for the  
amounts he has paid?"
2. "Also, what is the limitation on any action  
he would have if the County is liable to  
reimburse him?"

The facts are that Newton County, as a political subdivision,  
entered into an agreement with the State of Missouri July 18, 1951,  
as authorized by law, whereby the benefits of the system of Federal  
Old-Age and Survivors Insurance were extended to all its eligible  
employees and officials and undertook thereby to pay into the Con-  
tributions Fund, created by the Social Security Law, contributions  
with respect to wages paid to such employees and officials. Pursuant  
to this agreement, the said county has been making payments to the  
appropriate state agency for the Contributions Fund.

In the case of the county collector of revenue and eligible  
employees of his office, the collector has followed the practice

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of drawing checks on his personal bank account in amounts sufficient to cover the required contributions, which checks are delivered to the county clerk who transmits them to the state agency along with county funds being used to pay contributions with respect to wages paid other county employees and officials. The county's employer identification number was used in transmitting these funds.

As indicated in your letter, this office on April 29, 1970, issued Opinion No. 288 wherein it was concluded as follows:

"The county is liable for payment of the tax on wages paid by the county to its Collector, his deputy and clerical employees, without limitation except as contained in the Social Security Act. Payment by the Collector of wages to deputy and clerical personnel from the amount the Collector is authorized to retain for deputy and clerical hire under Section 52.280, House Bill No. 399, 75th General Assembly, is payment by the county insofar as social security is concerned."

We believe the views expressed in Opinion No. 288 are applicable to the present matter in concluding that Newton County, rather than the collector of Newton County in his individual capacity, should have paid contributions on wages of the collector and employees of his office.

Although there is no statute which expressly authorizes the restitution of this money, it is our view that the doctrine announced by the Supreme Court of Missouri in Ewing v. Vernon County, 216 Mo. 681 (1909) and followed thereafter, is applicable to this case. The doctrine is, that where a public official in performing a duty enjoined on him by statute, necessarily expends his own funds, there being no statutory provision for meeting these expenses out of the public treasury, he may be reimbursed for such expenses. See Miller v. Webster County, 228 S.W.2d 706 (Mo. 1950); Maxwell v. Andrew County, 146 S.W.2d 621 (Mo. 1940); Motley v. Pike County, 135 S.W. 40 (Mo. 1911), and cases cited therein.

Whether these decisions were based on construction of the particular statutes involved or a quasi-contractual right not based upon statute is not of importance in the present matter considering the statutory authority for counties to enter into agreements for payment of contributions under the Federal Old-Age and Survivors Insurance System (Section 105.350, RSMo 1969) and considering further the fact that Newton County is party to such an agreement. The obligation to pay the employers' share of the Social Security taxes is

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clearly that of the county, and the expense is one necessarily incurred in operation of the collector's office. If the collector, in default of the county, pays this expense, he is entitled to reimbursement.

With reference to the second question presented by your request, it is our opinion that Section 516.120, RSMo 1969, relating to the five year statute of limitations would apply inasmuch as the action would be upon an implied obligation or liability of the county to reimburse the collector of revenue.

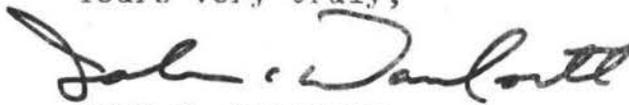
CONCLUSION

It is, therefore, the opinion of this office that:

1. The county is liable to make restitution to the collector of revenue for personal funds of the collector used to pay the county's obligation under the Social Security Law.
2. An action to recover money paid by collector of revenue for the county in connection with employers' contributions under the Social Security Act must be maintained within five years.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John E. Park.

Yours very truly,



JOHN C. DANFORTH  
Attorney General