

COMPENSATION:  
COUNTIES:  
EX OFFICIO COLLECTORS:  
TOWNSHIP COLLECTORS:  
TOWNSHIPS:

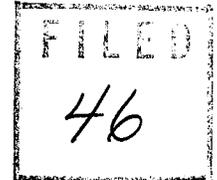
In determining the compensation of an ex officio collector of a third class township county the total amount levied for any one year calculated under Sec-

tion 54.320, RSMo Supp. 1982, does not include delinquent taxes.

February 28, 1983

OPINION NO. 46-83

The Honorable Nicholas L. Swischer  
Prosecuting Attorney, Vernon County  
110 North Cedar, Box 565  
Nevada, Missouri 64772



Dear Mr. Swischer:

This opinion is in response to your inquiry as to the amount of fees an ex officio collector of a third class county adopting township organization may receive and keep as a part of his salary for taxes collected. Specifically, you ask whether delinquent taxes should be included when computing the total amount of taxes levied for any one year in determining the compensation of an ex officio collector.

In pertinent part, Section 54.320, RSMo Supp. 1982, allows an ex officio collector in a third class county adopting township organization to collect a commission of three percent of all taxes collected by him including current taxes, back taxes, and delinquent taxes. Additionally, the ex officio collector is allowed a commission of two percent on all back taxes and all delinquent taxes collected by him which are taxed as costs against the persons or entities owing such taxes and collected as other taxes. However, the statute also contains the following limitation:

Other provisions of law to the contrary notwithstanding, the total compensation of ex officio collectors shall not exceed the sum of ten thousand dollars annually, which maximum amounts shall include the costs of any deputy or assistants employed; except that, in all counties wherein the total amount levied for any one year exceeds two million dollars

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and is less than four million dollars, the ex officio collector shall present for allowance proper vouchers for all disbursements made by him on account of salaries and expenses of his office and other costs of collecting revenue, which shall be allowed as against the commissions collected by him; and out of the residue of commissions in his hands, after deducting the amounts so allowed, the ex officio collector may retain a compensation for his services not to exceed ten thousand dollars per year; and except that, the maximum compensation herein provided shall not be applicable to ex officio collectors in counties wherein the total amount levied, for any one year exceeds four million dollars. The limitation on the amount to be retained as herein provided applies to fees and commissions on current taxes, but does not apply to commissions on the collection of back and delinquent taxes and ditch and levee taxes.

It has been suggested that delinquent taxes should be included in determining whether the total amount levied for any one year exceeds four million dollars, and where this is so, the compensation limitations are not applicable. We disagree. In dealing with the question of commissions to be paid a county collector, the Missouri Supreme Court has said that statutes authorizing fees and commissions are to be strictly construed against the collector. Kirkpatrick v. Rose, 344 S.W.2d 59, 62 (Mo. 1961). In our opinion, the phrase "total amount levied for any one year" necessarily means current taxes where the proper authority by formal order has declared property at its assessed value and subjected it to taxation at a fixed rate. See, State v. Davis, 73 S.W.2d 406, 407 (Mo. banc 1934).

It is apparent from the language of Section 54.320, RSMo Supp. 1982, that the legislature was well aware of the distinction between current taxes and delinquent taxes. The statute specifically allows the ex officio collector a commission of three percent on delinquent taxes as well as current and back taxes, and an additional commission of two percent on all back and delinquent taxes collected to be taxed as costs against the persons owing such taxes. Furthermore, the statute specifically exempts commissions on the collection of back and delinquent taxes from the compensation limitations. Had the legislature intended to expand the definition of "levy" as set forth in the Davis case, or the term "levied for any one year" as set forth in the statute, to include all outstanding delinquent taxes as well as current ones, it would have said so specifically.

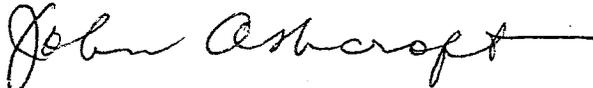
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CONCLUSION

It is the opinion of this office that in determining the compensation of an ex officio collector of a third class township county the total amount levied for any one year calculated under Section 54.320, RSMo Supp. 1982, does not include delinquent taxes.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard L. Wieler.

Very truly yours,



JOHN ASHCROFT  
Attorney General