

COUNTIES: A county collector in a third
COUNTY COLLECTORS: class, nontownship county
DRAINAGE DISTRICT: collecting taxes pursuant to
Section 242.540, RSMo 1986,
for drainage districts organized in circuit court must collect
on behalf of the county the fees provided for in Section 52.275,
RSMo Supp. 1988, and deposit these fees into the county general
revenue fund, unless the collector and the county have
contracted to allow the collector to retain these fees, or a
part of them, pursuant to subsection 3 of Section 52.269, RSMo
Supp. 1988.

July 21, 1989

OPINION NO. 44-89

The Honorable Norman Merrell
Senator, District 18
State Capitol Building, Room 423
Jefferson City, MO 65101

Dear Senator Merrell:

This opinion is in response to your question asking:

Whether the provisions of Section
52.269.3, RSMo Supp. 1988 providing that
certain fees for county collectors cease
after the 1988 general election, apply to
county collectors collecting taxes pursuant
to Section 242.540, RSMo 1986, for drainage
districts organized in circuit court.

We understand your question relates to a third class,
nontownship county.

Section 52.275, RSMo Supp. 1988, provides:

52.275. Drainage and levee tax
commissions.--The county and township
collectors for collecting taxes for
drainage and levee districts shall collect
on behalf of the county and pay into the
county general fund the following amounts:
In counties of the second class having less
than one hundred thousand inhabitants and
in counties of the third class, one and
one-half percent of the amount he collects
on current taxes; in counties of the third

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class where the collector is required by law to maintain a branch office, two and one-fourth percent of the amount he collects on current taxes; in counties of the fourth class, two percent of the amount he collects on current taxes; and in counties of the second class having less than one hundred thousand inhabitants and in all counties of the third and fourth classes, two percent of the amount he collects on delinquent drainage and levee taxes.

The 1987 amendment to Section 52.275 provided that all fees collected pursuant to this section are to be collected on behalf of the county and paid into the county general revenue fund. See Laws of Missouri, 1987, page 400, 413. Prior to 1987 all fees collected pursuant to this section were retained by the collector.

Before Section 52.275 was enacted in 1959 (see Laws of Missouri, 1959, Senate Bill No. 62), county collectors collecting taxes for drainage districts organized in circuit court were authorized under Section 242.550, RSMo 1959, to retain fees for collecting those taxes. Chapter 243, RSMo 1959, Drainage Districts Organized in County Court, had no provision that allowed county collectors to retain fees for collecting taxes in these drainage districts. Section 246.040, RSMo 1959, which was applicable to all drainage districts, prescribed a fee for a collector collecting taxes for drainage and levee districts. In 1961, during the legislative session following the enactment of Section 52.275, Section 242.550, RSMo 1959, authorizing county collectors to retain a fee for collecting taxes of drainage districts organized in circuit court, and Section 246.040, RSMo 1959, which allowed county collectors to retain a fee for collecting any ditch or levee tax, whether the district was organized in circuit court or county court, were repealed. See Laws of Missouri, 1961, page 444. As a result of these legislative revisions, Section 52.275 remained as the only section authorizing county collectors to retain a fee for collecting taxes for drainage districts organized in either circuit court or county court (now called county commission).

During the 1987 legislative session, the General Assembly adopted Section 52.269, RSMo, which provided county collectors, except those in certain first class counties, with an annual salary. See Laws of Missouri, 1987, page 400, 412. Before the passage of Section 52.269, most county collectors derived a major part of their compensation from fees they retained for

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collecting certain taxes, including fees authorized by Section 52.275 for collecting ditch and levee taxes. Since the General Assembly provided these county collectors with an annual salary under Section 52.269, other sections authorizing county collectors to retain a fee for collecting certain taxes were changed to require that those fees be collected on behalf of the county and paid into the county general revenue fund. These sections included Section 52.275.

Subsection 3 of Section 52.269, RSMo Supp. 1988, after being amended during the 1988 legislative session, provides:

52.269. Compensation of county collector--training program, attendance required, when, expenses, compensation--certain fees may be retained (certain counties).--

* * *

3. Any provision of law to the contrary notwithstanding, any fee provided for in subsection 1 of section 52.250 or 52.275, when collected on ditch and levee taxes, shall not be collected on behalf of the county and deposited into the county general revenue fund. Such fees shall be retained by the collector as compensation for his services, in addition to any amount provided for such collector in this section, until the next general election after January 1, 1988. After the general election following January 1, 1988, the governing body of the county may contract with a collector for the retaining of such fees or a portion thereof. Any fee which may be retained by the collector under the terms of such contract may be retained in addition to all other compensation provided by law.

Subsection 3 allows county collectors in certain situations to retain fees provided for in Sections 52.250 and 52.275 when collected on ditch and levee taxes despite the language in Sections 52.250 and 52.275 requiring those fees to be collected on behalf of the county and paid into the county general revenue fund.

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However, subsection 4 of Section 52.269, RSMo Supp. 1988, provides:

4. Except as provided in subsection 3 of this section, after the next general election following January 1, 1988, all fees collected by the collector shall be collected on behalf of the county and deposited in the county general revenue fund.

After the general election following January 1, 1988, the county collector is not entitled to retain any of the fees collected pursuant to Sections 52.250 and 52.275 on ditch and levee taxes, unless the collector and the county have contracted for retention of these fees, or a part of them, as provided in subsection 3 of Section 52.269. As demonstrated above, Section 52.275 is the only section authorizing a fee for county collectors collecting taxes for drainage districts organized in circuit court. Therefore, county collectors collecting taxes pursuant to Section 242.540, RSMo 1986, for drainage districts organized in circuit court must collect on behalf of the county the fees provided for in Section 52.275, and deposit these fees into the county general revenue fund, unless the collector and the county have contracted to allow the collector to retain these fees, or a part of them, pursuant to subsection 3 of Section 52.269.

CONCLUSION

It is the opinion of this office that a county collector in a third class, nontownship county collecting taxes pursuant to Section 242.540, RSMo 1986, for drainage districts organized in circuit court must collect on behalf of the county the fees provided for in Section 52.275, RSMo Supp. 1988, and deposit these fees into the county general revenue fund, unless the collector and the county have contracted to allow the collector to retain these fees, or a part of them, pursuant to subsection 3 of Section 52.269, RSMo Supp. 1988.

Very truly yours,



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