

County Collector:

SCHOOL FUNDS: Forfeited commissions and penalty adjudged against Collector for failure to timely account for tax collections goes into county public school fund.

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April 10, 1944.



Mr. J. R. Gideon,  
Prosecuting Attorney  
Taney County,  
Forsyth, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of January 27, 1944, requesting our opinion on the following:

At the October, 1942, Term of Circuit Court in Taney County, a judgment for \$180.00 was rendered against a former collector under the terms of Section 11099, R. S. Mo. 1939, which provides:

"If any county collector, or ex officio county collector, shall fail or refuse to pay the taxes and licenses into the state and county treasuries, as provided in the preceding section, he shall forfeit his commissions thereon, and in addition thereto shall pay a penalty of ten per cent of the amount thereof,\* \* \*".

The collections which the collector failed to pay into the treasuries as required were made during February, 1943, but were not paid over until sometime after the period fixed by law. In making the delinquent payment into the treasuries the collector retained his usual commissions out of the tax collected together with penalties collected off delinquent taxpayers as provided by law. These commissions were as follows: Commissions on collections deducted out of taxes collected \$108.18, and Commissions collected from taxpayers in the form of penalties for delinquency \$55.48, totaling \$163.66. This sum, plus ten per cent thereof (\$16.34) added as a penalty under Section 11099, supra, constituted the \$180.00 judgment. Upon payment of this sum into court by the former collector in satisfaction of the judgment, it was turned into the county school fund on the theory it was a penalty, forfeiture or fine within the meaning of those terms as used in Section 8, Article II of the Constitution.

You desire to know whether this action was proper. Section 8, Article II of the Constitution provides:

"\* \* \* the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State, \* \* \* shall belong to \* \* \* a county public school fund\* \* \*."

We think this opinion turns on the meaning of "penalties and forfeitures" as used in this section; and in this connection we wish to point out that Section 11099 states that the commissions shall be "forfeited" and a ten per cent "penalty" imposed where the collector is delinquent.

In *Barnett v. Atlantic & Pacific R. Co.*, 68 Mo. 56, at l.c. 64 it said of Section 8, Article II, that:

"This section clearly refers to penalties accruing to the public\* \* \*."

Next we desire to point out that "fines" for breaches of the penal (i.e. criminal) laws are specifically mentioned so it therefore would seem that the terms "penalties and forfeitures" were intended to cover something other than fines imposed for the commission of crimes. In *Kaes v. Railroad*, 6 Mo. App. l.c. 405, it is said:

"The Constitutional provision \* \* \* whereby 'the clear proceeds of all penalties and forfeitures' are directed to go into the public school fund, evidently applies only to penalties and forfeitures actually collected by the public county authorities."

Again in *State v. Railroad*, 253 Mo. 642, in a concurring opinion (l.c. 657) it is stated:

"That the law necessarily involves the idea of punishment and to that end employs language (the word 'forfeit') appropriate only to a penalty, that the penalty is directed to the punishment of a public wrong as contradistinguished from a private wrong\* \* \* I think, is clear. That the 'clear proceeds' of such penalty belong to the public school funds and that no such penalty can be created payable to any other object or to any person without violating the Constitution, is also clear."

We think under the foregoing the forfeited commissions, as well as the penalty imposed on the collector properly were placed in the county school fund. They were imposed as punishment for a public wrong, that is, the failure to pay over when required. The money was collected by the public county authorities under Section 11099, supra. The statute (Sec. 11099) under which it was collected terms it as "forfeiture" and "penalty", and with complete silence in the law as to the disposition of the sum collected we think it is permissible to assume that it accrues to the public.

It thus appears that the standards heretofore used in determining what are "penalties" and "forfeitures" under Section 8, Article II are all applicable to the instant case.

CONCLUSION.

It, therefore, is our opinion that where a collector is delinquent in paying over taxes, the forfeited commissions and penalty adjudged against him under Section 11099, shall, when paid, be placed in the county school fund.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney-General.