

- SALARIES AND FEES: 1. Township trustee's commissions based on total amount received and disbursed during each year.
- TOWNSHIP TRUSTEE: 2. Township trustee only entitled to commissions on disbursements made for expenses of the township as set out in Sec. 12303, R. S. Mo. 1929.

August 10, 1938



Honorable Glen W. Huddleston
Prosecuting Attorney
Carrollton, Missouri

Dear Sir:

This is in reply to your request of July 16th for an opinion from this department based upon the following questions:

"1 - Under the Laws of Missouri, 1931, page 377, the trustee of a township board is allowed, as part of his compensation: 'two per cent for receiving and disbursing all moneys coming into his hands as such treasurer when the same shall not exceed the sum of one thousand dollars and one per cent of all sums over said amount'. The trustee of Wakenda township, Carroll County, Missouri, receives and disburses about three thousand dollars each year, but he never pays out more than one thousand dollars at one time. Would he be entitled to charge two per cent commission on the three thousand dollars disbursed, or would all of his disbursements for the entire year be added at the end of the year and he only be allowed two per cent on the first one thousand dollars and one per cent on all sums over that?

"2 - The trustee of Carrollton township, Carroll County, Missouri, wrote a check for \$51,000.00 against a fund that had been raised by the sale of township bonds,

and gave said check to a custodian of said funds that had been selected by the township board of Carrollton township. The trustee made no other disbursement of this money except to write this check to the township's custodian, and said trustee charged a one per cent commission on said money as a disbursement. Is this one per cent commission charged by said trustee a legal charge under the laws of the State of Missouri?"

I.

Your first question involves the question of how a township trustee may compute his commissions, whether upon each disbursement or upon the total disbursements for any one year.

On the question of the amount of salary any officer in this state may retain during any one year, we find that Section 13 of Article IX of the Constitution provides as follows:

"The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

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And in the case of State ex rel. v. Pohlman, 60 Mo. App. 1. c. 449, the court in discussing an opinion of the Supreme Court in Harrington v. City of St. Louis, 107 Mo. 327, said:

" * * * It was also held that the receipts for a year are composed of the fees and emoluments earned and collected during that year."

Section 12310, Laws of Missouri, 1931, page 377, provides in part as follows:

"And provided further, that the township trustee as ex officio treasurer shall receive a compensation of two per cent for receiving and disbursing all moneys coming into his hands as such treasurer when the same shall not exceed the sum of one thousand dollars and one per cent of all sums over said amount."

Section 12292, R. S. Mo. 1929, provides in part as follows:

"The township treasurer shall, annually, between the first day and the tenth day of July of each year, settle with the township board and account for all school moneys received, from whom and on what account, and the amount paid out for school purposes and for building purposes to the various school districts of the township."

While this section is not very pertinent to the question, yet it does appear that the lawmakers intended that the township treasurer should conduct his office on an annual basis.

Section 12290, R. S. Mo. 1929, further evidences this intention by the following language:

"He (township trustee) shall make settlement annually between the twentieth day of March and the fifteenth day of April with the county clerk of all moneys received by him on account of schools, * * *."

We further find that the rule as it applies to officers is stated in Vol. 46 C. J., page 1019, Section 250, which is as follows:

"Statutes relating to the fees and compensation of public officers must be strictly construed in favor of the government, and such officers are entitled only to what is clearly given by law."

This rule is applicable in Missouri. In the case of Holman v. City of Macon, 155 Mo. App. 1. c. 402, the court said:

"A recognized rule of statutory construction is that a public officer cannot demand any compensation for his services not specifically allowed by statute and that statutes fixing such compensation must be strictly construed."

We think that said Section 12310, as amended by Laws of Missouri, 1931, at page 377, should be construed together with said Section 13 of Article IX of the Constitution, and that the trustee's compensation should be based upon his disbursements for any one year.

CONCLUSION

It is, therefore, the opinion of this department that the township trustee as ex officio treasurer shall receive a compensation of two per cent for receiving and disbursing all moneys coming into his hands as such officer in any one year when the total disbursements and receipts for such year shall not exceed the sum of one thousand dollars and one per cent of all sums over one thousand dollars received and disbursed during such year.

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II.

On the second question of your request, we find that the duties of the township trustee as ex officio treasurer as to paying out of township funds in payment of claims against the township are set out in Section 12306, R. S. Mo. 1929, which is as follows:

"When any claim or account, or any part thereof, shall be allowed by the township board of directors, they shall draw an order upon the township trustee in favor of the claimant for the amount so allowed--said order to be signed by the president of said board, and attested by the township clerk and delivered to said claimant."

Section 12303, R. S. Mo. 1929, sets out what shall be charges against the township, which section is as follows:

"The following shall be deemed township charges: First, the compensation of township officers for their services rendered in their respective townships; second, contingent expenses necessarily incurred for the use and benefit of the township; third, the moneys authorized to be raised by the township board of directors for any purpose, for the use of the township."

This section fixes the things which are charges against the township. The paying of moneys by the township trustee to a custodian does not come within the class of payments authorized by said section, and as the trustee's duties are purely statutory, he would not be authorized to collect a commission for making a disbursement which he was not authorized to make.

The proper answer to your question, we think, depends upon the meaning to be placed upon the word "disbursing" as it is used in this section. Does this word as used here mean the payment of township charges as they are defined in Section

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12303, R. S. Mo. 1929, or does it mean the disbursing of said money for township charges and the turning over of township funds to a custodian appointed by the board? If the section means disbursing the township charges and turning over township funds to a custodian, then we can not understand why the Legislature made disbursing one of the elements which the commission is based upon. It could have said a commission on all moneys received by the trustee, which would have had the same effect, because by receiving commissions on the moneys paid for township charges and those turned over to a custodian, he would be receiving a commission on all moneys received.

To so construe this section would not give effect to the word "disbursing." As said in State v. Daues, 14 S. W. (2d) 1. c. 1002:

"It is an elementary and cardinal rule of construction that effect must be given, if possible, to every word, clause, sentence, paragraph, and section of a statute, and a statute should be so construed that effect may be given to all of its provisions, so that no part, or section, will be inoperative, superfluous, contradictory, or conflicting, and so that one section, or part, will not destroy another. * * *"

In the case of Wright, Admr. v. Wilkerson, 41 Ala. 1. c. 272, the court, when it had before it the interpretation of the phrase "receipts and disbursements" in determining what compensation should be allowed an administrator, said:

"The word 'disbursement' in the same section evidently means money or currency paid out in extinguishment of the liabilities of the decedent or the expenses of the administrator."

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The foregoing provisions of the statute are general as to the township organizations and the duties of the officers. From your letter dated August 17, 1938, which was written in response to our letter inquiring how the township board came into possession of the \$51,000.00, we have learned that this money came from the sale of road bonds for the township. That being the case, Sections 7960, 7961, 7962, and 7963, R. S. Mo. 1929, control the township officers and the county court in their duties pertaining to such fund. These are special statutes as to road funds for township organizations and they take precedence over the general statutes.

On these particular sections, we find that this office by an opinion dated August 10, 1937, written by Mr. Max Wasserman, Assistant Attorney General, to Mr. Mark W. Wilson, Prosecuting Attorney of Clinton County, Missouri, construed these sections as they apply to the township trustee and the county court. We are enclosing a copy of this opinion for your information.

CONCLUSION

This office is therefore of the opinion that the only moneys which the trustee is permitted to collect a commission on are those for disbursements which are set out in Section 12303, and for the disbursements which he makes under the order of the county court by authority of Section 7963, R. S. Mo. 1929. The disbursements which he makes under Section 12303 are (1) compensation of township officers for their services rendered in their respective townships, (2) contingent expenses necessarily incurred for the use and benefit of the township, and (3) the moneys authorized to be raised by the township board of directors for any purpose, and under Section 7963, the proceeds from the bonds which are sold by the county court and turned over to the treasurer and disbursed by him under order of said court. We are further of the opinion that the moneys which the township trustee turns over to a custodian do not come within the class of disbursements listed above, and for that reason the township treasurer is not authorized to collect a commission on such moneys.

Respectfully submitted

APPROVED:

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