

Township Collectors must account for funds due State and County as prescribed by statute.

9928-17337-17322 R.S. No. 1929 ✓  
June 6, 1933 ✓



Honorable A. P. Kelly, Jr.  
Prosecuting Attorney  
Mercer County  
Princeton, Missouri

Dear Sir:

This is to acknowledge your letter of May 13th, 1933, which is as follows:

"Three banks in Mercer county have been open under such restrictions that several township collectors are unable to with draw thereupon the amount of their collections which is now due the State and County. These men have good bondsmen, but the County Court does not deem it necessary to bring suit on the bonds of the several collectors in view of the fact that the banks in question will probably be able to pay the money within a few weeks or at least the Court will know whether said money can be paid within that time.

The four collectors are willing to pay over to the State its part of the funds and the County Court is desirous of knowing whether that could be permitted and whether or not in view of the premises it could postpone action against the collectors and their bondsmen for the county funds due. Please give me your opinion on this question."

Sections 12333 and 12337 R. S. No. 1929, pertain to the settlements of township collectors and the procedure therefor, and provides a penalty for the failure to settle. We shall set out parts of these sections that are relevant to your inquiry.

Section 12323 provides:

"The township collector of each township shall, at the term of the county court to be held on the first Monday in March of each year, make a final settlement of his accounts with the county court for state, county, school and township taxes" . . . .  
 He shall also, on or before the twentieth day of March in each year, make a final settlement with the township board." . . .  
 If any township collector shall fail or refuse" . . . . .  
 to pay over the state and county taxes" .  
 the county court shall attach him until he shall" . . . . .  
 pay over the money found due from him." . . ."

Section 12337 provides:

"The township collector shall, on or before the fifth day of each month, make out and file in the office of the clerk of the county court a statement, in writing, showing the amount of taxes collected by him for state, county, school, road, township and all other purposes during the preceding month," . . . .  
 On or before the tenth day of each month the township collector shall, after deducting his commissions, pay over to the county treasurer and ex officio collector all state and county taxes collected by him during the preceding month." . . . . .  
 If any township collector " . . . . . shall neglect or refuse to pay over to the county treasurer and ex officio collector the state and county taxes collected by him during the previous month" . . . . .  
the county clerk shall immediately after such default, and not later than the fifteenth day of the month in which such statement was or should have been made, certify such fact to the state auditor and the prosecuting attorney of the county; and the state auditor and the prosecuting attorney shall proceed against such defaulting township collector in the same manner

as is provided by Section 9928\* \* \*

Any county clerk failing to perform any of the duties devolving upon him by virtue of this section shall be liable to all the penalties inflicted by section 9928 for failing to perform the duties enumerated in sections 9927 and 9928, and it shall be the duty of the county clerk to certify a copy of such monthly statement to the state auditor.\* \* \* "

Section 9928 R. S. Mo. 1929, reads as follows:

"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, on the amount thereof, and it shall be the duty of the state auditor to issue a distress warrant for such state taxes and penalties within thirty days, as provided by law. It shall be the duty of the prosecuting attorney to proceed, within thirty days, to collect such county, school, road and municipal taxes by suit on the official bond of such defaulting collector."

From the reading of these three sections it will be noted that the statutes make it mandatory upon all parties, therein mentioned, to comply with the strict provisions of same.

If the township collectors do not pay the money over as provided by the statutes, supra, then such collectors would be amenable to the penalty therein imposed. It is true that abnormal banking conditions exist and perhaps no fault of the collectors that taxes collected by them and deposited in banks and such are not now available because of same being on a restricted basis, yet the law does not provide for such an exception for their failure to account for the funds. When a township collector takes upon himself the duties of his office he must see to it that

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moneys that come to him by virtue thereof, shall reach the place it is designated to go as required by statute. The duty to account for the funds is the responsibility of the township collector.

You will note that the county clerk has duties devolving upon him if the funds are not paid, and the county treasurer and ex officio collector, and the state auditor, and you also as prosecuting attorney. Thus if the statute is waived as to township collectors it would only be reasonable that the duties to be performed by the other officers, mentioned therein, should also be abrogated.

It is therefore our opinion from the above and foregoing that the statutes (being mandatory) do not permit the county or the state to wait for the funds collected by township collectors, and that collection for such should be instituted as set forth in the statutes.

Yours very truly,

JAMES L. HORNBOSTEL,  
Assistant Attorney General.

APPROVED

~~ROY McKITTRICK~~  
Attorney General.

JLH:MM