

COLLECTORS - Voluntary overpayment to County.
ATTORNEY GENERAL - Cannot decide questions of fact in opinions.

H-20
April 12th, 1934.



Honorab^{le} Thomas A. Mathews
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Sir:

We have carefully gone over your request of March 1st, 1934, together with the brief statement of facts submitted therewith relating to the overpayment by the Collector of St. Francois County, Mr. Brewer, to the State of Missouri in the sum of \$1319.23 during the years 1925, 1926 and 1927, and the subsequent deduction of that amount by the Collector of St. Francois County from amounts remitted to the State.

It appears from your request that the succeeding County Collector, Mr. Coffield, distributed this money to the County Road and School Fund, whereas it should have been paid to Mr. Brewer as the former collector.

The voluntary overpayment of money by a county to the County Collector, in the absence of fraud, collusion or mistake of fact, is binding on the county and cannot be recovered. State ex rel. Lawrence County v. Shipman, 125 Mo. 436. It is also equally true that a voluntary overpayment by a collector to the county in the absence of fraud, duress or misrepresentation is binding upon a collector, and such money cannot be recovered from the county. Hethcock v. Crawford County, 200 Mo. 170. However, your request presents the additional facts of whether or not the letters from the State Auditor, dated April 6, 1925, March 24, 1926 and March 29, 1927, demanding payment of such taxes to the State, constitute duress within the exception of the two above mentioned cases. We think this is a question of fact to be determined by a fact

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finding body. Whether the County Collector, in making this payment, was acting under duress, is a question of fact and not one of law, and under such circumstances the Attorney General's office is without the necessary authority to enter into controversial matters and decide questions of fact. 6 C. J., Section 16, p. 811.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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