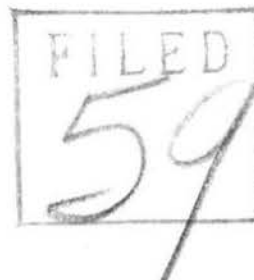


FEES--DRAINAGE DISTRICTS--TOWNSHIP ORGANIZATIONS: Fees for collecting and disbursing drainage funds are independent allowances and should be paid as such even under township organization:

March 23, 1935.



Honorable E. A. McDonald
Prosecuting Attorney
Mercer County
Princeton, Missouri

Dear Sir:

Your request for an opinion dated March 15, 1935, is as follows:

"I call your attention to Sections 10880 and 10881, Statutes 1929.

"Our County is under Township Organization.

"The County Treasurer is Ex Officio collector of delinquent taxes. In collecting delinquent drainage tax will he receive two per. cent. on all sums collected as collector and also receive one per. cent as Treasurer.

"It is contended by some that in as much as the Treasurer and Ex-Officio collector is the same and one person he would be entitled to only two per. cent."

Section 10796 R. S. Mo. 1929, provides that the Secretary to the Drainage District shall extend and certify drainage tax to township collectors. You state that in your County, now under township organization, the County Treasurer is ex-officio Township Collector. Said section also provides the duties imposed on the township collector, provides for a separate bond, independent of his bond as County Treasurer, covering his ex-officio office and allows him the same compensation for collecting as County Collector are allowed in Counties not under township organization. Said Section reads as follows:

"In counties where the provisions of chapter 86, R. S. 1929, are, or may hereafter be in force, the secretary of the board of supervisors shall extend all drainage taxes under the provisions of this article on separate tax books for the respective townships in which such lands are situate, and such tax books shall be certified to the township collectors of such townships at the same time and in the same manner as provided for county collectors. Such taxes shall be collected by such township collectors at the same time and in the same manner as state and county taxes are collected, and each township collector shall give bond, have the same authority to collect such taxes, receive the same compensation therefor and pay over such taxes to the secretary of board of supervisors, as provided for county collectors under this article, and shall be subject to the same penalties and liabilities. Such township collectors shall make due return of such tax books under oath in the same manner as required of county collectors. The delinquent drainage taxes shall be certified by the secretary of the board of supervisors to the county treasurer as ex officio collector of delinquent taxes, who shall collect such delinquent drainage taxes at the same time and in the same manner as is herein provided for the collection of the delinquent drainage taxes in counties not under the provisions of chapter 86, R. S. 1929. The said treasurer as ex-officio collector of delinquent taxes shall give bond, have the same authority to collect such taxes, receive the same compensation there-

for and pay over the said taxes to the treasurer of the drainage district as is provided for county collectors under this article, and shall be subject to the same penalties and liabilities. All township drainage tax books, and the return of the collectors of such books, shall be taken as prima facie evidence in all courts of all matters therein contained, and that the delinquent tax shown in such books was properly levied and extended against such lands and remains unpaid. The lien of such tax shall be enforced and suits to collect such delinquent tax shall be instituted and prosecuted in the same manner provided by this article, except such suits shall be instituted by the drainage district on tax bills duly made out and certified by the county treasurer as ex officio collector of delinquent taxes."

Section 10832 R. S. Mo. 1929, requires the County Treasurer to be a custodian of the funds of the District, except as otherwise provided. No doubt it is these funds, coming into his hands as treasurer, on which he demands a commission. Said Section requires that he receive and receipt for all such funds, and that he enter into a separate bond with each District covering receipts. Said Section provides as follows:

"The treasurer of the county in which a drainage district is located shall act as treasurer of the district and shall be the custodian of the funds of the district, except as otherwise provided in this article. He shall receive and receipt for all such funds and shall enter into a separate bond for each district in the county in a sum to be fixed by the court, not less than the probable amount of funds of said district to be in his possession at any one time. Such bond shall be payable to the district, shall be

approved by the court, shall be signed by two or more resident freeholders in the county or by a surety company authorized to transact business in the state and shall be conditioned for the faithful and prompt disbursement according to law of all such funds as shall from time to time be in his possession. The premium on such bond may be paid by the district. Except as otherwise provided in this article, the treasurer shall keep all district funds received by him deposited in a bank or banks selected in the same manner and at the same time that the depository for county funds is selected. All interest accruing on district funds shall be credited to the district and any premium on a surety bond may be paid by the district."

As custodian of the funds it becomes his duty to disburse said funds as the statutes provide. It is *NOT* necessary to go into the situation where he, as county treasurer, is authorized to disburse, for purposes of this opinion. It is necessary that we observe that his duties as ex-officio collector are independent of his duties to disburse as County Treasurer.

Section 10880 R. S. Mo. 1929, provides for the fee to township collectors for collecting drainage tax, and reads as follows:

"The county and township collectors for collecting current taxes for drainage and levee districts shall receive one per cent. of all such taxes collected, and for the collection of delinquent taxes for such they shall receive two per cent. of all sums collected.

Section 10881 R. S. No. 1929, provides for the fee for the County Treasurer as custodian of drainage funds and reads:

"County treasurers for receiving, receipting for, preserving and paying out funds of drainage and levee districts, shall receive one per cent. of sums paid out."

The above provisions of law provide that the ex-officio collector shall receive one per cent. for collecting current taxes and two per cent. for collecting delinquent taxes. Said provisions also allow a one per cent. fee to the County Treasurer as custodian and disbursing officer of drainage funds. It is not unusual for the Legislature to provide additional fees to an officer imposed with added duties.

In the case of Little River Drainage District v. Lassater, 29 S. W. (2d) 716, 1. c. 719, the Supreme Court said:

"It would seem that, in collecting taxes for drainage districts, even though such drainage district might include the entire territory of the county, county collectors would be performing no duties or functions of their offices as county collectors. In performing these duties they are agents and officers of and perform them for such districts."

In your case it can equally be said that as ex-officio collector of delinquent taxes the County Treasurer is performing no duty of said office of County Treasurer, but is the agent of the drainage district.

CONCLUSION.

It is the opinion of this office that the collection of drainage taxes is no part of the duties

March 23, 1935.

ordinarily incident to the office of township collectors. Such statutory duties are additional duties dependent upon the existence of a drainage district having lands, taxable for district purposes, lying within the territorial jurisdiction of said officer. It is our further opinion that township collectors, in collecting such taxes, are officers and agents of the particular drainage district, required to give separate bonds to any such districts, and entitled to receive for collecting the fees allowed in Section 10880, supra.

We are further of the opinion that as County Treasurer, the statutory disbursement of drainage funds for drainage districts is additional to the ordinary duties of a County Treasurer. He is required to give a bond separate from his official bond as County Treasurer to all such drainage districts in the territorial jurisdiction of said officer. His duties have been enlarged upon.

In addition to fees provided for in Section 10880, it is our opinion that he is also entitled to receive the fee provided for in Section 10881, supra, for disbursing funds of the drainage district, held in his custody, independent of his duty as County Treasurer to disburse County funds.

We are of the opinion that the duty of collecting, as ex officio collector, and the duty of disbursing as custodian, were intended by the Legislature to be paid for as separate independent services. The Legislature so provided and if it intended different it would not have been so particular about providing otherwise.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

WOS:H