

COUNTY TREASURER: Not entitled to fees on school
disbursement or levee district
FEEES AND SALARIES: account.

February 20, 1943

Mr. O. F. Preusser
County Treasurer
Perry County
Perryville, Missouri

2-27



Dear Sir:

This is in reply to your letter of February 12, 1943, which contains the following request for an opinion:

"I am writing for an opinion in regard to fees of County Treasurers.

"Is the County Treasurer entitled to fees on school warrants collected, and if there are other fees he can collect on, for instance, levee district accounts at settlement, which occurs twice a year."

The question involved in your request, is, whether or not you, as county treasurer, are entitled to fees on school warrants collected, and levee district accounts.

According to the last federal decennial census, the population of Perry County is 15,358.

The section applicable to your compensation is Section 13800 Laws of Missouri, 1941, page 534, and reads as follows:

"The county treasurers of the several counties of this State (except counties under township organization) shall receive for their services annually, to be paid out of the county treasury in equal monthly installments at the end of each month by a warrant drawn by the county court upon the county treasury, the following sums: * * * * in counties having more than 15,000 inhabitants and not more than 20,000, the sum of \$2,200; * * * Provided that this act shall not apply to any county now or hereafter containing a city of not less than 70,000 or more than 200,000 in population, to be determined by the last federal decennial census. Provided, salaries set out and prescribed in this section shall be in lieu of any other or additional salaries, fees, commissions or emoluments of whatsoever kind for county treasurers in all counties of this state to which this section, by its terms, applies, the provisions of any other statute of this state to the contrary notwithstanding."

In the second proviso above set out, it is specifically stated that the salary shall be in lieu of any other or additional salaries, fees, commissions, or emoluments of whatsoever kind.

The above proviso is unambiguous, and the county treasurer can only collect his salary, and is not entitled to fees for the performing of duties incidental to the duties of office of county treasurer.

The fees on school warrants collected, referred to in your request, are mentioned in Section 10400 R. S. Missouri, 1939, which partially reads as follows:

"The county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, until paid out on warrants duly issued by order of the board of directors * * * * *; and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him, and to be paid out of the county treasury."

Under the above partial section, it is the duty of the county treasurer to be the custodian of the moneys for school purposes, and he is allowed a certain per cent for the disbursement of the fund.

You also mention in your request, fees, in regard to levee district accounts. This fee is mentioned in Section 12471 R. S. Missouri, 1939, and reads as follows:

"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 two sections allowing fees to the county treasurer appear in the Revised Statutes of Missouri, 1939, but Section 13800, supra, was passed by the legislature in 1941, is an express repealing of Sections 10400 and 12471, supra, and is also a later act.

It has been held that where two statutes deal with the same subject matter, and are inconsistent with each other, so that both cannot be operative the latter act will be regarded as a substitute for the earlier one, and will operate as a repeal thereof, although it contains no express repealing clause. (Young v. Greene County, 119 S. W. (2d) 369).

The act of 1941, which places the county treasurer on a salary basis can be considered as expressly repealing all other acts allowing fees to the county treasurer for the performance of duties incident to his office.

All statutes should be strictly construed against the officers. (Nodaway County v. Kidder, 129 S. W. (2d) 857; Ward v. Christian County, 111 S. W. (2d) 182; Smith v. Pettis County, 136 S. W. (2d) 282.)

CONCLUSION

It is, therefore, the opinion of this department that the county treasurer is only entitled to his salary and is not entitled to fees on school warrants collected

Mr. O. F. Preusser

-5- February 20, 1943

and disbursed, or levee district accounts collected and disbursed, for the reason that such duties are incident to his office as county treasurer.

Respectfully submitted

W. J. BURKE
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APPROVED:

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