

TAXATION AND REVENUE: (Collectors can only retain a commission
COUNTY COLLECTORS : (on the amount of money actually collected
regardless of the face value of the tax bill

February 12, 1935.



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This is to acknowledge your letter dated February 8, 1935, as follows:

"In making an audit of the Collector's office of Stoddard County, I find that it has been the practice for the County Court to issue wholesale orders compromising taxes. For instance, a man has taxes charged against his farm in the amount of \$1,000, the County Court will compromise that tax for \$100 and it has been the custom of the collectors to charge a commission on the original amount of the taxes instead of a commission on the amount of money actually collected.

I would like an opinion from your office as to whether the collectors can legally retain the commission which he has charged on the face value of the tax bill."

We assume that the collectors are retaining commissions on compromised back taxes.

In 1933 the Legislature made many changes concerning taxation and revenue. Laws of Missouri, 1933, page 454,

Section 9935, in part provides as follows:

"The collector, except in counties where the collector is by law paid a salary in lieu of fees and other compensation, shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:"

We invite your attention to the fact that back taxes are excepted in the above section.

Laws of Missouri, 1933, page 429, Section 9969, provides for the fees to the collector for services rendered in collecting back taxes; and provides as follows:

"Fees shall be allowed for services rendered under the provisions of this article, as follows: To the collector, except in such cities, two per cent on all sums collected; in such cities, two percent on all sums collected-- such per cent to be taxed as cost and collected from the party redeeming. To the county collector, for recording the list of delinquent land and lots, twenty-five cents per tract, to be taxed as cost and collected from the party redeeming such tract."

We invite your attention to the wording of the statute, namely, "To the collector * * * two per cent on all sums collected."

In 1883 the St. Louis Court of Appeals in the case of State ex rel. Kemper v. Smith, 13 Mo. App. 421, l. c. 423, said:

"By another provision of the same statute, the fees allowed the collector

are fixed at 'four per cent on all sums collected.' Rev. Stats., sect. 6842.

It is thus perceived that the attorneys of the collector are not entitled to any fees in proceedings under this statute except such as may accrue as commissions upon 'taxes actually collected and paid into the treasury.' It is also perceived that the law in direct terms prohibits them from receiving any fee or compensation for services except such as may accrue by way of commissions upon taxes actually collected and paid into the public revenue. It is also perceived that the collector is not entitled to any fees in proceedings under this statute, except a per centum on 'sums collected.'

There is no doubt that the words 'sums collected,' as used in section 6842, mean revenue collected."

In *Gordon v. Lafayette County*, 74 Mo. 426, the Supreme Court of Missouri said (page 428):

"The compensation of the collector is fixed by law at a certain per cent on moneys collected by him. None is allowed for ineffectual efforts to collect the revenue. Not a cent of the money on which he claimed commission in this case, was collected by him, or under any proceeding or suit commenced by him. If there is any law for paying him, as was done by the county court, expenses for guarding or taking care of property levied upon by him for taxes, it has escaped our attention. That he levied upon property of the railroad company gives him no right to compensation. That arises only on collections actually made by him. Nor does it give any

strength to his case in a legal point of view, that the replevin and damage suits of the railroad company against him, were compromised by him with the consent, or by the advice of the county court. This by no means rendered the county liable to him for commissions on the taxes collected by the county after the termination of his office, and under proceedings commenced after his term of office had expired."

In State ex rel. Davidson v. St. Louis-San Francisco Railway Company, 66 S. W. (2d) 149, l. c. 150, the Supreme Court said:

"The word 'commissions' is without technical meaning. As used in this section it means a compensation of two per cent payable from the tax collected. Of course, the Legislature did not charge the two per cent against the taxpayer if the tax was paid before it became delinquent."

See, also:

State ex rel. Crutcher v. Koeln, 61 S. W. (2d) 750;
State ex rel. McKittrick v. Bair, 63 S. W. (2d) 64.

From the foregoing, it is our opinion that the collectors can only retain a commission on the amount of money actually collected, regardless of the face value of the tax bill.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

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