

COUNTY TREASURER EX officio collector-)
TOWNSHIP FORM OF GOVERNMENT)
PAYMENT OF DEPUTY COLLECTOR)

County Treasurer, ex officio
collector in county under town-
ship organization can not pro-
cure payment of deputy collector
out of a county general revenue.

January 27, 1949

FILED
86

*Special
Delivery*

1-27

Honorable Christian F. Stipp
Prosecuting Attorney
Carroll County
Carrollton, Missouri

Dear Mr. Stipp:

We have your letter of January 17, 1949, in which you request an opinion of this department. Your letter is as follows:

"The opinion of your office on the following question is respectfully requested:

Carroll County has a population of barely over 17,000, is a third class county and operates under township organization with a County Treasurer and Ex Officio Collector. The total taxes assessed and levied in this county approximate \$650,000. The County Treasurer and Ex Officio Collector has included in his budget of estimated expenditures for the year 1949, an item to be paid to him for deputy or clerical hire.

Question: In a county operating under township organization is the County Court authorized to appropriate out of the County funds a monthly sum to be paid to the County Treasurer and Ex Officio Collector and to be used by him for deputy or clerical hire?

Most requests, I presume, are for an immediate opinion. We would appreciate it very much if we could be advised of your opinion by January 28th, so that the county budget of estimated expenditures might be timely and properly filed by February 1st."

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We have considered the question presented in the light of the statutes and the available court decisions, and find that the only section authorizing collectors to appoint deputies is section 11067, R.S.A. Mo. 1939. The substance of said section is that a collector may appoint deputies by an instrument in writing. The section also defines the duties and powers of a deputy with which definition we are not concerned in this opinion.

The question as to whether or not a treasurer and ex officio collector in a township organization county has a right to appoint a deputy under this section has not been passed upon by the Supreme Court of this State, that Court having mentioned the question in *Alexander vs. Stoddard County*, 210, S.W. (2nd) 107, but having failed to rule thereon. However, such is not your question, because as shown by your letter above quoted, your specific question is whether or not the county court has authority to appropriate out of the county funds monthly sums to be paid to county treasurer to be used by him to hire a clerk or deputy.

We are of the opinion that if a county treasurer and ex officio collector can hire a clerk or deputy at all, that clerk or deputy must be appointed under the authority of section 11067, supra, but we are not passing on the question as to whether or not such an official can appoint a deputy by authority of said section for the two-fold reason that the Supreme Court in *Alexander vs. Stoddard County*, supra, mentioned said question without passing upon it, and that your above quoted letter does not request an opinion on that specific question.

If, however, it should be assumed that a county treasurer and ex officio collector in a county operating under a township organization plan does have authority under said section to appoint a deputy or clerk, we are of the opinion that said deputy or clerk can not be paid out of the general revenue of the county, but must be paid out of the fees earned by the collector according to law.

In this connection we direct your attention to

the following quoted language from section 11107, R.S.A. Mo. 1939:

"* * * but such deputy and/or clerical hire shall be payable out of fees and commissions earned and collected by such officer only and not from general revenue."

In Alexander vs. Stoddard County, 210 S.W. (2nd) 107, the facts were that Clyde Alexander, the county clerk and ex officio collector of Stoddard County, a county operating under the township form of government, employed a clerk to assist him in his work as collector and advanced the money to pay said clerk, and then sought to recover the amount expended from the general revenue fund of the county.

The Supreme Court of Missouri held that this money, if paid, must be paid from the fees earned by Alexander in the performance of his duty as collector, and not from the general revenue. In so holding, the Court cited section 11107, R.S.A. Mo. 1939, supra. The following is a quotation from the opinion of the Court:

"Furthermore, those statutes provide 'That the officers referred to in section 11106, in addition to the maximum amount of fees and commissions permitted to be retained by county collectors * * * each such officer may retain for the payment of deputy and/or clerical hire a sum not to exceed twenty-five per cent of the maximum amount of fees and commissions which such officer is permitted to retain by said section as so amended, but such deputy and/or clerical hire shall be payable out of fees and commissions earned and collected by such officer only and not from general revenue.' Mo. R.S.A. 11107. The precise question is not before us and for that reason we do not pass upon whether these sections authorize deputies for ex officio collectors in counties under township organization. But whether they do or do

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not authorize such deputies, they plainly indicate the source of their pay and limit it to 'fees and commissions earned and collected by such officer only and not from general revenue."

CONSLUSION

We are accordingly of the opinion that the county court of Carroll County can not rightfully appropriate out of the county funds a monthly sum to be paid the county treasurer and ex officio collector to be used by him for deputy or clerical hire.

Respectfully submitted,

APPROVED:

SAMUEL M. WATSON
Assistant Attorney General

J. E. TAYLOR
Attorney General

SMW:p