6.20

June 20, 1935.

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Mr. Robert E. Stone,
Collector of Revenue,
Macon, MIssouri.

Dear Sir:

        A request for an opinion has been received from you
under date of March 13, 1935, such request being in the
following terms:

        "I would like to ask you the following
        questions:

        (1) I want my daughter to help me in
        the Collector's Office. Is this
        permissible under the law.

        (2) As I understand the reading ofthe
        law pertaining to this office, the limit
        is $4500.00. This does not cover the
        fees for drainage tax and railroads
        and other corporations. Is this true?

        (3) What are the penalties on delinquent
        personal taxes for 1933 and prior?

        I would appreciate an early answer."

                        I.

                    NEPOTISM.

        In response to your first question we herewith enclose
to you a copy of the official opinion of this office dated
October 4, 1935, to Hon. Samuel M. McKay, Prosecuting Attorney,
DeSoto, Missouri, the conclusion of this opinion being as
follows:

"It is therefore the opinion of this
Department that the Collector of your
county is not guilty of violating
Section 13 of Article XIV by permitting
his daughters to render to him personal
service where the daughters are not
holding an official position and are
not, as officials, rendering service
to the State."

If the facts in your case conform to the facts related
in the opinion enclosed, to-wit, that your daughter will do some
work in your office, that she will not be paid any salary or hold
any official position in your office, then the conclusion to said
opinion is applicable to your case.

II.

TAXATION AND REVENUE---
COMPENSATION OF COLLECTOR.

Section 9935, R. S. Missouri 1929, as repealed and
reenacted by Laws of 1933, page 454, fixes the compensation of
collectors in various counties of this State, dependent as to
amount upon the amount of taxes assessed and levied for any one
year in the particular county, but from your figure of $4500
we assume that Subdivision XI of Section 9935 is applicable to
your county, which subdivision provides as follows:

"In all counties wherein the total amount
of all such taxes and licenses levied
for any one year exceeds two hundred
thousand dollars and is less than two
hundred and fifty thousand dollars, a
commission of one and three-fourths per
cent on the first two hundred thousand
dollars collected and two per cent on
whatever amount may be collected over
two hundred thousand dollars."

If this assumption is correct, then the total maximum compensation which you would be entitled to, assuming your commissions entitle you to such compensation, would be $4500, except as modified by the following paragraph.

Subdivision XV of such Section 9935 contains the following:

> "and all fees and commissions coming into the hands of any collector from any source whatever in excess of the amounts herein specified, * * *shall be paid into the city, county and state treasuries in proportion to the amount received on taxes collected for each;* * *provided, that the limitation on the amount to be retained as herein provided shall apply to fees and commissions on current, back and delinquent taxes, but shall not apply to commissions on the collection of ditch and levee taxes, and the compensation of the county collector for the collection of levee taxes and ditch taxes, collected for drainage purposes, shall be one per cent of the amount collected."

It appears from the foregoing that the maximum of $4500 allowed you applies to "fees and commissions on current, back and delinquent taxes" and it is our opinion that fees for the collection of railroad and other corporation taxes are to be included within this limit of $4500. However, by the terms of the foregoing section compensation allowed the county collector for the collection of levee and drainage taxes may be retained by you in excess of the $4500.

III.

PENALTIES ON DELINQUENT PERSONAL TAXES.

Section 9914, R.S. Missouri 1929, as repealed and re-enacted by Laws of 1933, page 449, provides in part as follows:

"If any taxpayer shall fail or neglect
to pay such collector his taxes at the
time and place required* * *then it shall
be the duty of the collector, after the
first day of January then next ensuing,
to collect and account for, as other
taxes, an additional tax, as penalty,
the amount provided for in section 9952."

The amount fixed by Section 9952 is "ten per centum on such tax
delinquent for the preceding year and an additional annual ten
per centum on taxes for each year prior to the proceding year,
* * *provided, the per centum of penalty added shall not exceed one
per centum per month."

The above statutes are modified by Senate Bill No. 143
enacted by the Fifty Eighth General Assembly, and approved by the
Governor, which contains an emergency clause, and which provides
in Section 1 thereof as follows:

"That all penalties and interest on
personal and real estate taxes, delinquent
for the year 1934 and prior years shall
be computed after December 31, 1934, on
the same penalty and interest basis as
the taxes delinquent for the year 1934
until paid."

It is our opinion in view of the foregoing that the
interest penalty on personal taxes and real estate taxes is the
same, to-wit, one per cent per month but not in excess of ten per
cent per annum, during the period of delinquency. In view of the
last quoted act, all delinquent personal taxes are to bear interest
penalty as though they were taxes assessed for the year 1934, and
therefore at one per cent per month the interest penalty on personal
taxes would, during the month of June, amount to six per cent. We
assume that by the term "penalty" in your request you refer to the
interest penalty. Senate Bill 143 supra, became effective April
29, 1935.

Respectfully submitted,
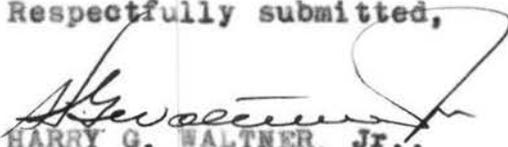
HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
Acting Attorney General.

HGW:MM