

COUNTY May not make daily reports and deposits with
COLLECTOR: county treasurer unless authorized by statute.

March 5, 1943



Honorable H. Tiffin Teters
Prosecuting Attorney
Jasper County
Carthage, Missouri

Dear Mr. Teters:

Under date of February 20, 1943, you wrote this office requesting an opinion as follows:

"I have been requested by the County Collector of this County to obtain from your office an opinion as to whether or not the County Collector may make daily reports and payments to the County Treasurer's office, filing with said reports a detailed statement verified by affidavit, the same as on the monthly reports.

"By Sec. 11098, R. S. Mo. 1939, the Collector is to make a report before the fifth day of each month and payment before the fifteenth. Sec. 11103 provides for payment also.

"The Collector contemplates in addition to making a report and daily remittances to the Treasurer's Office, to also make the monthly report statement, which would be compiled from the daily reports.

"Please advise if you know any reason why such daily reports should not be made."

In your letter you refer to Section 11098 and Section 11103 R. S. Mo., 1939. These sections of the statutes are herein set out and are respectively as follows:

"Every county collector and ex officio county collector, except in the city of St. Louis, shall, on or before the fifth day of each month, file with the county clerk a detailed statement, verified by affidavit, of all state, county, school, road and municipal taxes, and of all licenses by him collected during the preceding month, and shall, on or before the fifteenth day of the month, pay the same, less his commissions, into the state and county treasuries, respectively. It shall be the duty of the county clerk, and he is hereby required, to forward immediately a certified copy of such detailed statement to the state auditor, who shall keep an account of the state taxes with the collector."

"Every collector of the revenue having made settlement, according to law, of county revenue by him collected or received, shall pay the amount found due into the county treasury, and the treasurer shall give him duplicate receipts therefor, one of which shall be filed in the office of the clerk of the county court, who shall grant him full quietus under the seal of the court."

No authority has been found which would justify the county collector in making daily reports and payments to the county treasurer's office as contemplated by him.

The foregoing sections of the statute do not provide for payment and report daily. The maxim, "expressio unius est exclusio alterius", is applicable to statutes prescribing a method of doing something. *Keane v. Strodtman*, 18 S. W. (2d) 896, 1. c. 898:

" * * * * * The familiar maxim of "expressio unius est exclusio alterius" may also be invoked, for the maxim is never more applicable than in the construction of statutes. *Whitehead v. Cape Henry Syndicate*, 105 Va. 463, 54 S. E. 306; *Hackett v. Amsden*, 56 Vt. 201, 206; *Matter of Attorney General*, 2 N. M. 49.

"Certainly where, as at bar, the statute (section 2702) limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done. This is the general rule as to the application of the maxim. Even more relevant under the facts in this case is the interpretation given to it by the Kansas City Court of Appeals in *Dougherty v. Excelsior Springs*, 110 Mo. App. 623, 626, 85 S. W. 112, 113, to this effect: 'That when special powers are conferred, or where a special method is prescribed for the exercise and execution of a power,' that exercise is 'within the provision of the maxim * * * and * * * forbids and renders nugatory the doing of the thing specified except in the particular way pointed out.'"

Further, in this connection it is desired to

call to your attention that the General Assembly in some instances has made different provisions concerning reports and deposits by collectors. Section 11056 R. S. Mo., 1939, authorizes county courts in counties having a population of less than seventy-five thousand to require the collector to make daily deposits in the county depository. Section 13871 R. S. Mo., 1939, requires the collector in counties in which there is a city having a population of not less than fifty thousand nor more than one hundred fifty thousand inhabitants to report daily to the county auditor.

Section 13893 R. S. Mo., 1939, requires the collector in counties having a population of more than eighty thousand and less than one hundred fifty thousand inhabitants to make daily reports to the county auditor. Section 13909 R. S. Mo., 1939, requires the collector in counties having a population of not less than fifty thousand nor more than one hundred fifty thousand and having a total taxable wealth of more than fifty million dollars to make daily reports to the county auditor and to deposit daily in the county depository.

By these sections of the statutes we have a legislative interpretation of Section 11099 and 11103, supra. The General Assembly, in making these other sections of the statutes, clearly shows that it was the intention of the Legislature that Section 11099 and 11103, supra, are mandatory, and that the collector would not be authorized under those sections to make reports and deposits in any other manner.

Legislative interpretations are not binding upon courts, but they are entitled to great weight. Morgan

v. Jewell Construction Company, 91 S. W. (2d) 683, 1.c. 641:

"It is well established that a construction of a statute by the Legislature, as indicated by the language of other or subsequent enactments, is entitled to consideration as an aid to interpreting a statute. 59 C. J. p.1033; State ex rel. v. Kachmann, 275 Mo. 47, 54, 204 S. W. 513; State ex inf. v. Long-Bell Lumber Co., 321 Mo. 481, 12 S. W. (2d) 64; Evans v. McLalin, 189 Mo. App. 310, 175 S. W. 294; State ex rel. v. Wilson, supra; Cronin v. Kansas City Home Telephone Co., 131 Mo. App. 313, 109 S. W. 1038. * * * * *

CONCLUSION

From the foregoing it is the opinion of the writer that the collector of Jasper County should not make daily reports and deposits with the treasurer as contemplated by him. If the present method provided by statute for making reports and deposits by the collector is not satisfactory, it is suggested that the General Assembly is in session at the present time and the matter of amending a statute might be presented to the Assembly.

Respectfully submitted,

APPROVED:

W. C. JACKSON
Assistant Attorney-General

ROY McKITTRICK
Attorney-General

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