

COLLECTORS: Collectors may retain 2% collected on delinquent taxes in addition to regular fees.

December 7, 1938



Honorable Conn Withers  
Prosecuting Attorney  
Liberty, Missouri

Dear Sir:

We have received your letter of November 23, 1938, which is as follows:

"We are in some confusion here, and as the Prosecuting Attorney of Clay County, Missouri, I would appreciate and do hereby request the opinion of your Department upon the construction of paragraph 15 of Section 9935 as found on pages 551 and 552 of the Acts of the Missouri legislature of 1937, concerning the following particular:

"Will the County Collector, elected to take office, the first of March, 1939, be allowed to retain, in addition to his regular deductible commission the 2% collected from the taxpayer and the fees for licenses and fees from the back tax book?"

Section 9935, as amended and contained in the Laws of Missouri, 1937, page 548, provides in part 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:

"1. In each county in this state wherein the whole state, county, bridge, road, school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year amount to five thousand dollars or less, a commission of ten per cent on the amount collected.

"2. In all counties wherein the total amount of all such taxes and licenses levied for any one year is over five thousand dollars and less than ten thousand dollars, a commission of ten per cent of the first five thousand dollars collected and six per cent on whatever amount may be collected over five thousand dollars. \* \* \*"

Subsections 3 to 13, inclusive, of said section are in the same wording as subdivision 2, quoted above, except for different commissions on different amounts of taxes and licenses levied.

Subsection 14 is a long subdivision starting with the amount the collector may receive in counties or cities where such taxes and licenses levied exceed two million dollars for any one year. Further, this subsection provides:

"On all back taxes and all other delinquent taxes, he shall be allowed a commission of two per cent which shall be added to the face of the tax bill and collected from the party paying such tax as a penalty in the same manner as other penalties are collected and enforced, which commission the collector shall be entitled to retain as compensation for additional services rendered in collecting delinquent taxes and the amount of said commission shall not be included in computing the maximum salary allowed the collector. \* \* \*"

Subsection 15 reads in part as follows:

\* \* \* \* Provided, that no collector, except as provided in subdivision fourteen

herein, shall be allowed to retain commissions and fees in any one year in excess of the following amounts: in any county coming within the provisions of subdivisions one to seven, inclusive, hereof not more than \$2,500.00; in any county coming within the provisions of subdivision eight, not more than \$3,000; \* \* \* and all fees and commissions coming into the hands of any collector from any source whatever in excess of the amounts herein specified, except as provided in subdivision fourteen, 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 taxes, but shall not apply to commissions on the collection of back and delinquent taxes \* \* \*."

Section 9969, as amended and contained in the Laws of Missouri, 1933, page 429, relative to the collection of delinquent taxes, provides in part 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. \* \* \*"

The same question you ask was passed upon by the Supreme Court in connection with two statutes almost identical with Sections 9935 as amended and 9969 as amended. In the case of State ex rel. Shannon County v. Hawkins, 169 Mo. 615, l. c. 619, the court said:

"The only question remaining is whether the collector was and is entitled to retain the commission of four per cent, amounting to \$203, on back taxes collected in 1898.

"Section 7640, Revised Statutes 1889 (section 9260, Revised Statutes 1899) provides: 'The collector shall receive as full compensation for his services in collecting the revenues, except back taxes, the following commissions.' The section then fixes the rate according to the amount of revenue collected, and as already said, Shannon county fell in the fifth subdivision, which fixed his commission at five per cent.

"When defendant's final settlement for the taxes of 1898 came on for approval, he claimed a credit of \$203, or five per cent on the amount of the back taxes collected by him in 1898. The county court, under the advice of the prosecuting attorney, refused to allow him this five per cent on back taxes. He refused to pay that amount into the treasury and the county brought this suit. The circuit court adjudged that he was entitled to said commission, and the county appealed.

"The contention of the county is that the fees allowed collectors for services rendered under the back-tax law of 1877 (sec. 9309, R. S. 1899, sec. 7688, R. S. 1889) are in lieu of all other compensation, and that the collector is not entitled to any commission from the State or county, but must get his compensation out of the fees which the law requires the delinquent taxpayer to pay.

"The question is one of construction entirely. Plaintiff construes section 7640, Revised Statutes 1889, or 9260, Revised Statutes 1899, as excluding back taxes altogether from its provisions, whereas defendant gives it the much more natural construction that the commissions therein provided shall be 'full compensation' for his services in collecting the revenues 'except back taxes' for which he is allowed certain other compensation as costs

which the delinquent taxpayer must pay to recompense the collector for the various extraordinary steps he is required to take to collect delinquent or back taxes.

"Reading the two sections together, as we must to arrive at the intention of the Legislature, it seems to us that section 9260 deals alone with the commissions to be retained by the collector out of revenues collected. Section 9309 deals with the costs allowed him for his extra services in addition to his commissions, and these are to be paid by the delinquent, and the collector is allowed only four per cent. Otherwise we would have the result in Shannon county that the State freely allows the collector five per cent for merely receiving and paying over taxes which the taxpayer tenders, but allowing him nothing by the State or county for collecting delinquent taxes at the end of a lawsuit, and after making out various delinquent lists and performing other duties in enforcing payment.

"Under appellant's construction, collectors whose commissions are fixed at five per cent and over would get less for collecting back taxes, with all the extra labor imposed by the statute, than they would receive for current taxes, a result we can not believe the Legislature ever intended. The general policy of the State, from 1871, at least, to this time, has been to offer collectors extra compensation as an inducement to bring in delinquent taxes.

"This is so in any event as to those collectors whose commissions, under section 9260, are less than four per cent, as they get more for back taxes even as costs than they do for current taxes.



"Another reason suggested by counsel for defendant is quite persuasive, and it is this: the State and county allow the collector commissions at different rates of per cent in proportion to the amount collected, and this merely for receiving and paying over the taxes, but when we come to these costs and fees, they are at the same rate, whether the amount is one thousand dollars or one million--which we think demonstrates that this fee is allowed for extra labor and not in lieu of that commission which the State has agreed to allow her collectors out of all taxes which they collect, whether current or back taxes.

"So far as the State is concerned, she pays no more and no less on either kind, but she visits upon the delinquent a penalty and allows that in addition to the collector who must necessarily render extra services.

\* \* \* \* \*

"We think the circuit court correctly ruled that the commissions allowed by section 9260, Revised Statutes 1899, should be full compensation for collecting all taxes, except back taxes, and as to the latter they should receive the extra fees which their extra labors and duties imposed upon them."

For the purpose of comparison, Section 9260, R. S. Mo. 1899, which is almost identical with Section 9935, reads in part as follows:

"The collector shall receive as full compensation for his services in collecting the revenue, except back taxes, the following commissions and no more:

"I. In each county in this state wherein the whole state, county, bridge, road, school and all other local taxes, including merchants' and dramshop licenses, assessed and levied for any one year, amount to five thousand dollars or less, a commission of ten per cent. on the amount collected.

"II. In all counties wherein the total amount of all such taxes and licenses levied for any one year is over five thousand dollars and less than ten thousand dollars, a commission of eight per cent. on the amount collected."

Also, Section 9309, R. S. Mo. 1899, which is almost identical with Section 9969, as amended, Laws of Missouri, 1933, page 429, reads in part as follows:

"Fees shall be allowed for services rendered under the provisions of this chapter as follows: To the collector, except in such cities, four per cent. on all sums collected; in such cities two per cent. on all sums collected--such per centum to be taxed as costs and collected from the party redeeming. \* \* \*"

#### CONCLUSION

The commissions allowed to collectors by Section 9935, as amended, Laws of Missouri, 1937, page 548, should be considered full compensation for collecting all taxes "except back taxes," but as to back taxes the collector should be allowed, in addition to the commissions allowed by Section 9935, certain other extra fees prescribed by

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Section 9969, as amended, Laws of Missouri, 1933, page 429, as costs, which the delinquent taxpayer must pay to recompense the collector for the extra labors and duties which the collection of delinquent taxes imposes.

Respectfully submitted

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APPROVED:

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