

COLLECTORS AND SHERIFFS: Authorized to appoint salaried attorneys under House Bill No. 480.

October 20, 1939

10-24

Mr. Forrest Mittendorf
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Dear Sir:

We are in receipt of your request for an opinion as to the effect of Section 8a of S.C.S.H.B. 480, found at page 682 of the Laws of Missouri, 1939, and which reads as follows:

"The collector of revenue shall employ an attorney to represent him in his official capacity and he shall represent the collector in all legal proceedings instituted by the collector for the collection of delinquent taxes. Said attorney shall receive an annual salary, payable monthly, of not to exceed \$3600.00 per year, as may be fixed by the County Court. The salary paid to said attorney shall be in full of all services rendered the said collector and in lieu of any fees, commissions and charges fixed by law in enforcing the payment and collection of delinquent back taxes on real estate. The sheriff shall be entitled to employ an attorney to

represent him in his official capacity, which said employment shall be approved by the county court. Said attorney shall receive an annual salary of not to exceed \$2000.00 per year, as may be fixed by the county court, which salary shall be in full for all services rendered the sheriff and in lieu of any fees, commissions and charges fixed by law."

In your conversation you mentioned that there was a contract in existence between the collector of your county and certain attorneys for the purpose of collecting delinquent taxes and which contract fixed the compensation of the attorneys. You suggest that such a contract might be abrogated or impaired by the enactment of the section above quoted.

In State ex rel. McKittrick v. Bair, 63 S. W. (2d) 64, the status of a contract existing between the collector and an attorney selected by him for prosecuting delinquent tax suits was fully discussed in the following language, l. c. 65:

"The attorney's fees are provided for by section 9952 of the Revised Statutes of 1929 (Mo. St. Ann. Sec. 9952), which, after providing that the collector shall proceed to enforce the payment of delinquent taxes charged on any lot or tract, by suit to enforce the lien thereon, further provides in substance that for such purpose the collector shall have power, with the approval of the county court, to employ such attorneys as he may deem necessary, who shall receive as fees such sum, not to exceed 10 per cent. of the taxes actually collected and paid into the treasury and an additional sum, not

to exceed \$3 for each suit instituted for the collection of such taxes; which said sum shall be taxed as costs in the suit and collected as other costs, and no attorney shall receive any fee or compensation for such services except as in this section provided. From the statute itself it is obvious that the attorney's right to fees does not accrue *pari passu* with the rendering of each act of service in a given case, but accrues as a whole after collection made or judgment rendered. 12 C. J. 973; *Coles v. Madison County, Breese* (1 Ill.) loc. cit. 157, 12 Am. Dec. 161. And, contrary to an argument pressed, the Legislature having fixed one definite and certain mode of payment, no other is permissible, and there can be no application of the doctrine of *quantum meruit*. *Greene County v. Lydy*, 263 Mo. 77, 172 S. W. 376, Ann. Cas. 1917C, 274.

"The contract entered into between the collector and his attorney, and approved by the county court, imposes no liability upon either the state, county, or the collector. It only fixes the status of the attorney as to his right to compensation and the amount thereof when in the tax suit the liability therefor becomes fixed upon the taxpayer's property by the final judgment in the case. *Butler v. Sullivan County*, 108 Mo. loc. cit. 638, 18 S. W. 1142. And, as stated in *State ex rel. Kemper v. Smith*, 13 Mo. App. 421, 423, 'It is clear, then, that unless the proceeding result in collecting a sum of money belonging to the public revenue, neither the collector nor

his attorneys can claim any costs in the cause.' The same rule necessarily applies to the other interveners, who as public officers have no contractual right as to their terms of office or their compensation or any vested right in either, the same being subject to legislative control. State ex rel. Attorney-General v. Davis, 44 Mo. 129; Givens v. Daviess County, 107 Mo. loc. cit. 608, 17 S. W. 998; State ex inf. Crow, Attorney-General, v. Evans, 166 Mo. 347, 66 S. W. 355; Gregory v. Kansas City, 244 Mo. 523, 149 S. W. 466. The fees of the collector and his attorney and of the interveners are subordinate to the general legislative power to impose, increase, diminish, or remit penalties for tax delinquencies; that no vested right of any of them is impaired by the remission."

The foregoing discussion concerns Section 9952, R. S. Missouri, 1929, which was amended by Laws of Missouri, 1933, at page 465. However, the amendment was held to be invalid in the case of State ex rel. Karbe v. Bader, 78 S. W. (2d) 835, so that any contract now in existence is under the authority of the statutes of Missouri, 1929.

House Bill No. 480, of which Section 8a above quoted is a part, provides in general for salary of the various county officials in counties of 200,000 to 400,000 inhabitants. So far as these salaries are concerned, they do not become effective until the beginning of the succeeding terms of the various officials or their successors. In Section 8a it is apparent that so far as the attorneys to be appointed by the collector and sheriff are concerned, the salaries set out therein become effective when the act becomes a law. It is set out

therein that the salary is to be in full of all services rendered and in lieu of any fees, commissions and charges fixed by law enforcing the collection of taxes.

In Section 9a of House Bill No. 480, found at page 683, Laws of Missouri, 1939, all acts, or parts of acts inconsistent with any provision of the bill are repealed. Furthermore, at page 878, Laws of Missouri, 1939, under House Bill No. 677, Section 9952 is expressly repealed so that there is no other provision than that found in Section 8a for the employment of attorneys to collect delinquent taxes. It is not to be assumed that the Legislature intended that collectors be left without a method to collect taxes.

An opinion as to the effective dates of all bills passed by the 1939 Legislature is being prepared by this department, and upon completion a copy will be sent you.

CONCLUSION.

It is our opinion, therefore, that Section 8a, found in Laws of Missouri, 1939, at page 682, in regard to the appointment of attorneys by the collector and sheriff in counties of 200,000 to 400,000 population, which provides the salary for such attorneys, is effective immediately upon the act becoming a law.

Respectfully submitted,

APPROVED

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RLH:RV