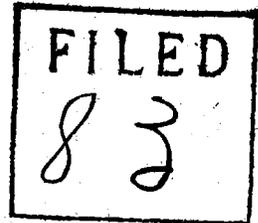


COUNTY COLLECTORS: Annual settlements of county collectors cover the period from March 1 to February 28.

May 12, 1947



6/12

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this department on the question of the period covered by the annual settlements with the county court by the collectors of the state, including those in counties having township organization,

From your request, it appears that the question now in your mind is that since the enactment of House Bill No. 721 passed by the 63rd General Assembly, which provides that the fiscal year and calendar year of all counties shall be the same, that there might be some question now as to whether or not the annual settlements of the collectors should be for the period January 1 to December 31. In other words, on a calendar year basis. Section 1 of House Bill No. 721, passed by the 63rd General Assembly, provides as follows:

"Unless otherwise provided in a charter adopted by a county under the provisions of Sections 18 or 31, 32 and 33 of Article VI, of the Constitution of this state, the fiscal year of the several counties of the state shall commence on January first and terminate on the thirty-first day of December in each year, and the books, accounts and reports of all county officers shall be made to conform thereto."

It will be noted that this bill requires the "books, accounts and reports" of county officers to conform to the fiscal year. The county collector, in making his monthly reports and in keeping his books, will be able to comply with the provisions of this section and still make his annual or final settlement in March as is required by other sections of the statutes. In the case of State ex rel. v. Pike County, 77 S.W. (2d) 94, the court, in speaking of the annual settlements of county collectors, said at l. c. 96:

"The annual settlement, which is required to be made, is recognized by law as something more than a mere report of the collector of the amounts collected and taxes remaining delinquent. It partakes of the nature of a settlement of the collector's accounts with the county and state. * * *"

Also in the case of State of Missouri ex rel. Brewer v. Federal Lead Company, 265 Fed. 305, the court, in distinguishing between annual settlements and monthly settlements of the county collectors, said at l.c. 309:

"* * * To the end that the collector may be relieved, upon the performance of either one or the other of the above contingencies, annual settlements with the county court are required. These settlements, to distinguish them, perhaps, from the 'monthly statements' and the monthly payments also required to be made by the collector (section 11473, supra), are called 'final settlements' in the statutes (section 11465, supra)."

These two opinions clearly demonstrate that the courts have distinguished between annual settlements and monthly settlements of accounts of the county collector. Undoubtedly the lawmakers, when they passed House Bill No. 765, did not overlook the fact that the provisions of Sections 11089, 11091 and 11092 provided for the annual settlement of the collector to be made in March because in said House bill, Sections 11090, 11093, 11095, 11098 and 11099 were repealed by that bill and new sections enacted in lieu thereof relating to the same subject matter.

From an examination of Sections 11089, 13990 and 14000, it will be found that they show conclusively that the collector must include any money collected after December 31 for any tax that might come into his hands after that date. In view of the attention that the lawmakers have paid to these various sections, repealing some and leaving some as they are, we do not think that there is any doubt but that they did not intend to repeal by implication the sections of the statute which provide for the annual settlement of county collectors to be made at the March term.

Said Section 11089, R. S. Mo. 1939, which relates to the duties of county collectors in counties not under township organization, reads in part as follows:

"At the term of the county court to be held on the first Monday in March, the collector shall return the delinquent lists and back tax books, and in the city of St. Louis the uncollected tax bills and back tax books, under oath or affirmation, to such court, and settle his accounts of all moneys received by him on account of taxes and other sources of revenue, and the amount of such delinquent lists, or so much thereof as the court shall find properly returned delinquent, shall be allowed and credited to him on his settlement. * * * "

Section 13989, R. S. Mo. 1939, provides that the county treasurer of counties having adopted township organization shall be *ex officio* county collector. This section reads as follows:

"The county treasurer of counties having adopted or which may hereafter adopt township organization shall be ex officio collector, and shall have the same power to collect all delinquent personal property taxes, licenses, merchants' taxes, taxes on railroads and other corporations, the delinquent or nonresident lands or town lots, and to prosecute for and make sale thereof, the same that is now or may hereafter be vested in the county collectors under the general laws of this state. The ex officio collector shall, at the time of making his annual settlement in each year, deposit the tax books returned by the township collectors in the office of the county clerk, and within thirty days thereafter the clerk shall make, in a book to be called the 'back tax book,' a correct list, in numerical order, of all tracts of land and town lots which have been returned delinquent by said collectors, and return said list to the

ex officio collector, taking his receipt therefor."

Section 13990, R. S. Mo. 1939, relates to annual settlements of such ex officio collectors, and it reads as follows:

"At the meeting of the county court on the first Monday in March in each year, or at such other time as may be directed by law, the county treasurer shall make a full and complete settlement of his accounts, and exhibit his books and vouchers relating to the same, which settlement of his accounts, when accepted by the court, shall be entered of record by the county clerk."

Section 14000, R. S. Mo. 1939, relating to the duties of township collectors, in respect to making settlements, reads as follows:

"The township collector of each township shall, at the term of the county court to be held on the first Monday in March of each year, make a final settlement of his accounts with the county court for state, county, school and township taxes and produce receipts from the proper officers for all school and township taxes collected by him, less his commission on same, at which time he shall pay over to the county treasurer and ex officio collector all moneys remaining in his hands, collected by him on state and county taxes, and shall at the same time make his return of all delinquent or unpaid taxes, as required by law, and shall make oath before said court that he has exhausted all the remedies required by law for the collection of said taxes. He shall also, on or before the twentieth day of March in each year, make a final settlement with the township board. If any township collector shall fail or refuse to make the settlement required by this section, or shall fail or refuse to pay

over the state and county taxes, as provided in this section, the county court shall attach him until he shall make such settlement of his accounts or pay over the money found due from him; and it shall be the duty of said court to cause the clerk thereof to notify the state auditor and the prosecuting attorney of said county at once of the failure of such township collector to settle his accounts, or pay over the money found due from him, and the state auditor and the prosecuting attorney shall proceed against such collector in the manner provided in section 14014 of these statutes, and such collector shall be liable to the penalties in said section imposed."

We note from your request that all of the collectors have been, for the past number of years, making their annual settlements at the March term for the period from March 1 to February 28, but that the enactment of said House Bill No. 721 has raised the question as to whether or not the period covered by such settlement should be for the calendar year, that is January 1 to December 31. We think these statutes, relative to collectors' settlements, are in the nature of special statutes and are exceptions to any general statute which would require settlements of accounts and reports on the calendar year basis.

Since the annual and final settlements of the various collectors are made at the March term of the county court, the time of the expiration of the term of such officers is relevant here, we think. Under House Bill No. 729 of the 63rd General Assembly, the term of the office of the county treasurer, who is ex officio collector in counties under township organization, expires on April 1. Under the provisions of Section 11073, R. S. Mo. 1939, the terms of office of county collectors in counties not under township organization expire on the first Monday in March of the year in which they are required to make their last and final settlement.

Under Section 11090 of H.C.S.H.B. No. 765, passed by the 63rd General Assembly, it is provided that the county collector shall make a final settlement with the county court on the first Monday in March of each year. Under Section 25 of S.C.S.S.B. No. 297, it is provided as follows:

"All officers and others bound by law to pay money directly to the state collector of revenue the director of revenue or the department of revenue shall exhibit their accounts and vouchers to the state collector of revenue on or before the thirty-first day of December, to be adjusted and settled, except the county and township collectors of revenue, who shall, immediately after their final settlement with the county court on the first Monday in March in each year, exhibit their accounts and vouchers to the state collector of revenue for the amount due the state to be adjusted and settled."

This section indicates that the collectors in counties other than township collectors shall make their final settlement to the county court on the first Monday in March in each year.

Section 13020, R. S. Mo. 1939, which was repealed by Senate Bill No. 448 of the 63rd General Assembly, provided that the fiscal year of the state would commence on January 1 and terminate on the 31st day of December of each year, and provided that the books, accounts and reports of public officers would be made to conform thereto. This section was repealed on account of Section 23 of Article IV of the Constitution of 1945 which changed the fiscal year of the state and all of its agencies to 12 months beginning on the first day of July in each year. However, on a review of the decisions of the court wherein said Section 13020 was under consideration, we find that the courts have held that the fiscal year for the county as well as the state began January 1 and ended December 31 (State ex rel. v. Allison, 155 Mo. 325). Therefore, it will be seen that the provisions of said House Bill No. 721, relating to the fiscal year of counties, conform to the rulings of the courts on the question.

It might be argued that if the annual settlement of the collector is for a period other than the fiscal year as provided for in said House Bill No. 721 that it would be in violation of said section because that act provides that the books, accounts and reports of all county officers shall be made to conform to the fiscal year period, that is from January 1 to December 31. The books, accounts and reports could be kept on a calendar year basis and not be in conflict with a final settlement made on March 1.

It would seem that one of the reasons for placing the counties on the fiscal year basis, from January 1 to December 31, is to enable the court to determine the amount of receipts of taxes for such period. The fact that the settlement of the county collector covered the period from March 1 to February 28 would not interfere with the county court in determining the amount of revenue which is collected during the calendar year because county and township collectors are required to make monthly reports and remittances of their collections to the county court. Section 11098 of H.C.S.H.B. No. 765 provides in part 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 county treasuries and to the Director of Revenue. * * *"

The information contained in the settlements made by the county collectors would be sufficient to enable the county courts to determine the amount of revenue collected during the calendar year.

Under Section 13827, R. S. Mo. 1939, county courts are required to annually prepare and publish a financial statement for the year ending December 31. As stated above, the information contained in the collectors' monthly reports required under said Section 11098 would be sufficient to enable the county court to comply with the provisions of said Section 13827, in so far as it requires the publication of the amount of funds collected during the year.

Said House Bill No. 721 would be classed as a general statute relating to the books, accounts and reports of the county officers. The sections of the laws herein referred to, relating to settlements of county collectors and ex officio county collectors, would come within the classification of special statutes applicable to such officers. In such cases where there appears to be an inconsistency in the provisions of different laws which relate to the same subject

matter, then the provisions of the special act will prevail as far as the particular subject matter comes within its provisions. This principle is announced in the case of State ex rel. McDowell v. Smith, 67 S.W. (2d) 50. In view of the fact that the 63rd General Assembly enacted legislation relating to the settlements of county officers including county collectors, it would appear that that body did not intend to change the provisions of the law relating to the duties of collectors in making annual or final settlements at the March term of the county court. That being the case, the annual settlement of collectors of revenue in all counties should include the collections for the period from March 1 to February 28.

CONCLUSION

It is therefore the opinion of this department that the annual settlements of county collectors, township collectors and ex officio collectors in township organization counties should be for the period from March 1 to February 28.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM