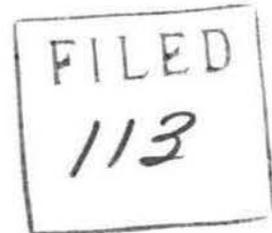


COUNTY COLLECTOR: 1. A county collector of a third class county
TAXATION: in his discretion may deposit tax money paid
under protest and impounded pursuant to Senate
Bill No. 39, 75th General Assembly, in interest-bearing time deposit
accounts. 2. The interest earned on deposits of taxes paid under
protest shall be paid to the person who is found to be entitled to
the impounded money.

OPINION NO. 113

June 15, 1970

Honorable James Millan
Prosecuting Attorney
Pike County Court House
Bowling Green, Missouri 63334



Dear Mr. Millan:

This official opinion is issued in response to the request contained in your letter concerning the investment of protested tax funds by a third class county collector, and the use of income received from such investment.

More specifically, the questions raised are as follows:

1. "May he place these in an interest-bearing savings account or certificate of deposit?"
2. "If the previous question is answered in the affirmative, what happens to the interest that these funds draw when the matter is finally determined?"

The moneys in question are held by the collectors pursuant to the provisions of Senate Bill No. 39, 75th General Assembly (Section 139.031, RSMo) which in pertinent part provides as follows:

"Section 2. The collector shall disburse to the proper official all portions of taxes not so protested, and he shall impound in a separate fund all portions of such taxes which are so protested. Every taxpayer protesting the payment of taxes, within ninety days after filing his protest, shall commence an action against the collector by filing a petition for the recovery of the amount

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protested in the Circuit Court of the county in which the collector maintains his office. If any taxpayer so protesting his taxes shall fail to commence an action in the Circuit Court for the recovery of the taxes protested within the time herein prescribed, such protest shall become null and void and of no effect, and the collector shall then disburse to the proper official the taxes impounded, as hereinabove provided.

"Section 3. Trial of the action in the Circuit Court shall be in the manner prescribed for non-jury civil proceedings, and, after determination of the issues, the court shall make such orders as may be just and equitable to refund to the taxpayer all or any part of the taxes paid under protest or to authorize the collector to release and disburse all or any part of the impounded taxes. Either party to the proceedings may appeal the determination of the Circuit Court.

* * *

"Section 5. No taxpayer shall receive any interest on any money paid in by him either erroneously or under protest."

The law sets forth detailed procedures for handling funds by county collectors of revenue. It is clearly intended that moneys collected be transmitted to the proper public authority entitled to receive the same on a periodic basis at frequent intervals.

Section 139.210, RSMo 1959, states:

"1. 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." (Emphasis supplied)

Section 139.220, RSMo 1959, provides:

"Every collector of 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 give him full quietus under the

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seal of the court."

Section 139.230, RSMo 1959, provides:

"1. Every county collector shall, on or before the fifteenth day of each month, pay to the director of revenue all state taxes and licenses received by him prior to the first day of the month."

Section 52.020, RSMo 1959, states:

* * *

"2. In all third and fourth class counties the county court may require the county collector to deposit daily all collections of money in the depositories selected by the county court in accordance with the provisions of sections 110.130 to 110.150, RSMo, to the credit of a fund to be known as 'County Collector's Fund.' * * * "

"3. The collector shall not check on the county collector's fund except for the purpose of making the monthly distribution of taxes and licenses collected for distribution as provided by law or for balancing accounts among different depositories."

In connection with school taxes, Section 165.348, RSMo 1959, states:

"The county collector in counties of the third and fourth classes, except in counties under township organization, shall pay over to the county treasurer at least once in every month all moneys received and collected by him which are due the board of education and shall take duplicate receipts therefor, one of which he shall file in his settlement with the county court. * * * "

Senate Bill No. 39 provides that protested tax funds are to be handled outside the usual procedures by impoundment in a separate fund to be held for ninety days or until the circuit court orders its disposition if a lawsuit is filed. The statute is silent as to how the impounded money is to be handled but it is apparent that during this period of impoundment the collector has the duty of safeguarding the fund. *City of Fayette vs. Silvey*, 290 S.W. 1019 (K.C.App.1926).

In the case of *City of Fulton vs. Home Trust Company*, 78 S.W.2d 445 (Mo.S.Ct.1934) a city collector collected certain funds which he was to turn over to the city treasurer monthly. It was his practice to deposit funds that he received during the month in demand deposits and then to transfer these funds at the end of each month by check

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to the city treasurer. The bank in which the collector deposited his monthly receipts failed and was placed under the control of the state commissioner of finance at a time when a substantial balance had accumulated pending transfer to the city treasurer. In determining whether the collector had authority to deposit this money in his hands in a bank for safekeeping the court said:

" * * * The fund in controversy, being the total, as stated, of numerous daily collections made by Brown as city collector during the month, was therefore being lawfully held and retained by him as city collector. * * * He was the legal custodian of these funds and certainly was authorized and warranted in depositing them, from time to time during the month, as received, in a bank for safe-keeping, if he chose to do so, and his act in so doing was not in violation or contravention of any statute or ordinance.

* * * Loc.cit. 78 S.W.2d 447.

It is apparent that inasmuch as the statutes do not control or designate the manner in which the collector is to handle these impounded tax moneys it is lawful for him to deposit them for safekeeping. In re Hunter's Bank of New Madrid, 30 S.W.2d 782 (Spr.App.1930); City of Aurora vs. Bank of Aurora, 52 S.W.2d 496 (Spr.App.1932).

Assuming then that the impounded tax moneys may be deposited by the collector of revenue, may such deposits be time deposits on which interest is received?

This office has previously held in Opinion No. 177, dated December 20, 1963, issued to Robert B. Mackey, a copy of which is attached, that county courts in making deposits of county funds are not limited to demand deposits, but may place a portion of the funds in interest-bearing time deposits. Likewise, in Opinion No. 223, dated October 27, 1969, issued to Senator Don Owens, a copy of which is attached, it was determined that the Director of Revenue in discharging his duty with respect to collection of intangible personal property taxes may deposit for safekeeping the portion of the revenue which he ultimately is to return to the county treasuries and that he may in so doing deposit these moneys in time deposit accounts which draw interest. It is believed that the principles set forth in these opinions are applicable to the matter under consideration. It should be observed that in Opinion No. 177 (Mackey) it was found that the funds could not be placed in certificates of deposit or bonds or other investments.

In the event the impounded funds are placed in time deposits the collector cannot preclude himself from performing his statutory duty to turn over these funds to the proper party at the appropriate time. As stated in Attorney General Opinion No. 223 (supra):

" * * * It would not be proper to enter into a contract which would in any way limit his ability to turn over the funds on the date pre-

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scribed by statute. He must be prepared at the appointed time to turn over the funds in his hands. Where this duty can be fulfilled and, at the same time, interest can be obtained, it is the opinion of this office that the authority which allows the deposit of funds in demand deposits provides equal authority to deposit funds in time deposits so that interest may be earned."

With respect to the second question raised in your letter, this office has previously expressed the opinion (Opinion No. 84, May 24, 1965, Lee C. Fine, copy of which is enclosed) that interest earned, the allocation of which is not governed by statute, is viewed as an accretion to the fund which produces it. This opinion was reaffirmed by this office in Opinion No. 223 (supra). Based upon the authority cited therein it is our opinion that the interest earned from the deposit of the impounded tax moneys paid under protest would follow the fund and be paid to the person who is ultimately determined to have the right to the fund.

Although Section 5 of Senate Bill No. 39 states that no taxpayer shall receive any interest on any money paid in by him either erroneously or under protest, it is our view that the legislature intended this section to prohibit the use of public funds for payment of interest on money held in abeyance pending determination of tax liability. This section would not deprive a taxpayer of his right to receive interest on his money invested at interest while impounded.

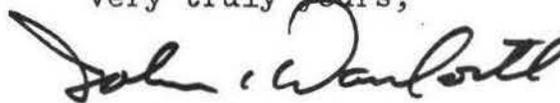
CONCLUSION

It is the opinion of this office that:

1. A county collector of a third class county in his discretion may deposit tax money paid under protest and impounded pursuant to Senate Bill No. 39, 75th General Assembly, in interest-bearing time deposit accounts.
2. The interest earned on deposits of taxes paid under protest shall be paid to the person who is found to be entitled to the impounded money.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Encls.
OP.177-Mackey-1963
OP.223-Owens-1969
OP.84 -Fine -1965